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The Menace of The Couzens Bill

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SENATOR James Couzens, in PUBLIC UTILITIES FORTNIGHTLY of August 7th, offers a defense of his bill, Senate Bill 3869, to regulate the interstate transmission of power, and states emphatically that it will not interfere with state commission regulation. Therefore, he feels it ought not to be opposed, but ought to be supported.

I am convinced that Senator Couzens is mistaken in his view that his bill, if passed, will not interfere with state regulation. It ought to be defeated because:

1. It is dangerous.
2. It is undesirable.
3. It is unnecessary.

It is dangerous because it will constitute an invasion of a field now exclusively occupied by the states, resulting in an unwarranted and undue Federal interference with and supervision of matters that are now and ought always to be purely of state concern, and because it will lead to substantially as complete Federal dominance of the power industry, as the Federal authority now dominates the railroad industry.

It is undesirable because the work which Senator Couzens proposes to turn over to a Federal agency will, if he succeeds, result in the building up of a tremendous governmental machine with an army of job holders, at enormous cost to the taxpayers, without any benefit to the taxpayer, greater than the benefit they now receive from the operations of their

own state commissions; that the proposed agency of control will be remote from the consumers, instead of close, as at present; because a remote Federal agency in charge of power regulation will be inefficient as compared with state agencies in close touch with local conditions, local communities, and local operating companies, and because the scheme as proposed will inevitably bring about conflict between state and Federal authority.

It is unnecessary because it will transfer to the Federal Government a work that state agencies are now doing acceptably to their people; which the states are peculiarly fitted to do but which the Federal Government is not fitted to do; which the states can do at less cost than can the Federal Government, and because there is no public demand for Federal regulation of the power industry.

Moreover, Senator Couzens' article proves exactly the contrary of what it sets out to prove. The enactment of his bill would be one more sin committed against the states in the name of the commerce clause of the Federal Constitution.

No one questions the sincerity and the honesty of Senator Couzens' motives. He states that he has tried to be fair. No one doubts that, for the Senator is a fair and a just man. He says that he wishes to supplement and not duplicate the work of the state commissions. That is his wish, certainly. But I feel that he is entirely mistaken in the ultimate, if not immediate, effect his bill will have. He makes a mountain out of the molehill of interstate power, and has conjured up perils which, if they exist at all, exist in a manner readily to be controlled by each state in the manner that suits it best.

At the outset it may be said that one feature of the Couzens Bill ought to be adopted. It is that relating to holding and management companies.

Management companies do offer a problem. Thus far it is not a problem of the first magnitude so far as my own state, Maryland, is concerned. It may be with others. Nevertheless, because they are purely interstate in character, it would be well for the Federal Government to take them in hand. But if Senator Couzens' bill should pass, in its present form, it would destroy the authority of the state commissions to act in this matter, as now they may act, and put the whole power situation in the hands of a Federal agency which probably would prove ineffective.

Holding and management companies make certain charges for services rendered to, and supplies purchased for, the held companies. It is obvious that the subsidiary or operating companies ought not to pay out any money unless they receive value for it. And while it is true that a state commission cannot get at the books of a holding company in another state, it nevertheless can put on the operating company the burden of showing exactly what price it pays for services and materials, exactly what these are, proof of their necessity and value, and the cost at which it could secure these services and materials for itself. The commission can then determine whether the prices

paid to the operating and management companies are excessive and, if so, disallow the excess as an operating cost.

If it is really the desire to supplement and not destroy the authority of the state commissions in the field of power regulation, this could be done by having the Federal authority secure and supply the state commissions with all information and data they might need bearing on the relations and financial transactions between the holding company and the operating company or companies in the state of the commission seeking the information, together with the detailed cost to the holding company of the services rendered and supplies furnished the operating companies. With such information the holding company problem readily could be met, so far as the rates and services of the operating companies are concerned.

But if that cannot be done without taking from the states the authority over their power companies which they now possess, then the loss the states would suffer would be far too great a price to pay for such information as might be helpful to them concerning the financial transactions between holding companies and held companies which are at present operating within their states.

Now, to get back to the objectionable features of the Couzens Bill:

It is true that Senator Couzens attempts to provide some measure of protection to state authority. But there can be no doubt in the minds of reasonable men that if his bill should become a law, it will be interpreted by the courts and amended by Congress from time to time until the protection to state regulation which Senator Couzens attempts to provide is swept away.

There is ample precedent for this belief. For no matter how fair the start may be in this particular field, that start will be the foundation upon which will be raised a structure of Federal authority which will in time take within itself control and domination of every element that enters into the power situation.

We cannot get away from the declaration of the Supreme Court in the Shreveport Case (234 U. S. 342), that where the Federal power exists it dominates, and we cannot doubt that it would dominate as completely in the power field as it dominates in that of the railroads. Once the step was taken, the intolerance of Federal authority and its impatience of restrictions upon its complete freedom

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"That *would be a clear surrender by the states of their authority.*"

of action would result in wiping out any restraints upon its power which originally might be provided for the protection of state authority.

The states now act in the power field, where even a small amount of interstate power enters, only because of the protection to their authority to regulate which is contained in the Supreme Court's decision in the Pennsylvania Gas Company Case (252 U. S. 23, P.U.R.1920E, 18). But it must be remembered that when that case was before the court, it was seriously contended that the state had no right to regulate the price at which the gas, transported across a state line, was sold to consumers, because "attempts by the states to regulate or restrict the freedom of importation, delivery, and sale of interstate commodities have repeatedly been declared repugnant to the Constitution," and that "in fixing the gas rates, the state necessarily regulates the rate, or return, for interstate transportation of the gas." Many decisions of the court were cited to sustain this view.

THE court, however, in deciding that the states could regulate the price at which the gas was sold to consumers because such regulation was local in its nature, and required in the public interest, took care to emphasize the control of Congress over any matter affecting interstate commerce, once Congress acts. It uses such expressions as these:

> "In dealing with interstate commerce, it is not, *in some instances,* regarded as an infringement upon the authority delegated to Congress, *to permit the states* to pass laws *indirectly* affecting such commerce when needed to protect or regulate matters of local interest. Such laws are operative *until Congress acts under its superior authority by regulating the subject matter for itself.*" (Italics mine.)

The decision concludes with these words:

> "Until the subject matter is regulated by congressional action, the exercise of authority conferred by the state upon the Public Service Commission is not *violative* of the commerce clause of the Federal Constitution." (Italics mine.)

Notice that the states are *permitted* to pass on certain matters *indirectly* affecting interstate commerce, only until Congress acts by regulating the subject matter for itself. And this, it would appear, means the whole subject matter, not a part of it. The states do not act because it is their right to act, but because such *indirect* action is not *violative* of the commerce clause.

Therefore, it seems clear that the only thing that enables the states to act now is the fact that Congress has not acted, and that as soon as Congress does act in the matter of power rates, the protection now afforded by the Pennsylvania Gas Case decision will no longer exist.

FOR who shall say that the old issue will not again be raised—that the fixing of local power rates necessarily regulates the rate of return for companies engaged in interstate transportation? And who shall say that when that question is raised the Supreme Court will not decide, as it decided in the Shreveport Case, that whenever interstate and intrastate transactions are "so related that the government of the one involves the control of the

Where the Federal Power Exists It Dominates the Power of the States.

"WHERE the Federal power exists it dominates, and we cannot doubt that it would dominate as completely in the power field as it dominates in that of the railroads. Once the step was taken, the intolerance of Federal authority and its impatience of restrictions upon its complete freedom of action would result in wiping out any restraints upon its power which originally might be provided for the protection of state authority."

other, it is Congress and not the state that is entitled to prescribe the final and dominant rule"; and that the state cannot fix the relation of interstate and intrastate charges "without directly interfering with the former unless it simply follows the standard set by Federal authority?"

And where will regulation by the states be then?

Ah, says Senator Couzens, I have provided against that! I have inserted provisions in my bill that protect the states. And he quotes these protective provisions.

Aside from the fact that some of these are nullified by other clauses of the bill, Senator Couzens certainly, in view of the record of Federal encroachments upon fields once regarded as exclusively within the jurisdiction of state authority, does not expect us to believe that he is so naïve as to think his protective provisions amount to anything. They are certainly no stronger than that of the original Interstate Commerce Commission Act of 1887 for an exactly similar purpose. That provision explicitly declared that the act should not apply to the transportation of persons or property wholly within one state, and the Interstate Commerce Commission, assuming that these words meant what they said, for many years kept its hands off intrastate rates. But the Supreme Court said "not so," and so construed the law that intrastate rates passed under the control of the commission.

Then the Transportation Act of 1920 wiped out the few remaining shreds of authority over intrastate rates that had been left to the states by the Shreveport decision, but, as pointed out by Mr. John E. Benton, in his article in PUBLIC UTILITIES FORTNIGHTLY of January 9, 1930, Congress did insert a clause in the Transportation Act for the protection of the state. This provided that the authority of the commission should not extend to the construction or abandonment of spur, industrial,

team, switching, or side tracks, located wholly within one state.

DID this clause in the Transportation Act amount to anything?

Not at all.

The first time it got before the Supreme Court (Texas & P. R. Co. *v.* Gulf C. & S. F. R. Co. (1926) 270 U. S. 266) the court so construed it that it no longer means anything. A spur track, or an industrial track, according to the court, is not a spur track or an industrial track, although it be short, is located wholly within one state, is adjacent to the main line, and "the character of service contemplated be that commonly rendered to industries by spur or industry tracks," but, it is an *extension*, not subject to state authority, when it will enable the road building it to obtain business in a territory served by another road. So, as a protection to the authority of the states in their own territory, that is out.

Next there was a paragraph framed for the purpose of excluding all electric railroads from the operations of the act when such electric railroads were wholly within one state and were not operated as any part of a steam railroad system. These words were as definite as they could be made, but did they mean anything more than the others?

Hardly.

The Interstate Commerce Commission first decided that they did not mean "any electric road not a part of a steam railroad system," but "any electric railroad engaged in interstate transportation of freight interchanged with other carriers," and when this construction got into court (Piedmont & Northern R. Co. *v.* United States (1929) 30 F. (2d) 421) it was sustained. So any electric railroad, wholly within one state, that receives any goods brought from without the state by another carrier and turned over to it for local delivery, or any such electric road receiving any goods whatever that may be turned over to another carrier for transportation beyond a state line, becomes subject to the provisions of the act. The National Association of Railroad and Utilities Commissioners, which had the provision referred to inserted in the act might just as well have saved its time and effort. They were wasted.

Now what better chance can Senator Couzens believe his protective clauses will have when they get before the courts than those just mentioned have had?

Mr. Benton, who is general solicitor of the National Association of Railroad and Utilities Commissioners, discussed these cases in his article already referred to, "to show that it is difficult, if not impossible to use words which will insure state power in any field from invasion and destruction once a Federal agency is empowered to act within that field"; and that "the only way to preserve state jurisdiction within a given field from destruction is to refrain from authorizing any Federal agency to enter that field." He is absolutely correct in this conclusion and as he expresses my own thought on the subject better than I can express it, I adopt his words as my own.

NOW, why is it that the Couzens Bill is both undesirable as well

as dangerous to state authority?

In the first place because it will transfer to the Federal Power Commission duties now being performed by the states to the satisfaction of their peoples.

Senator Couzens points out that the Federal Government's jurisdiction over interstate commerce is exclusive.

Right!

That it cannot constitutionally delegate this authority to the state or any one else.

Correct!

Therefore, he suggests the appointments of joint boards made up of state representatives but acting as agents of the Federal Power Commission, and as such, arms of the Federal Government to pass upon rates, charges, or services, where any, even the slightest amount, of interstate current is involved.

That would be a clear surrender by the states of their authority.

These joint boards will not be state agencies, acting by reason of the sovereignty of their own states, but, no matter how thickly the pill may be sugar coated, no more than subordinate agencies of the Federal power, appointed to do a job they can perfectly well do as state bodies, so long as the Federal Government keeps its hands off. The joint boards will be completely under the domination of the Federal Power Commission which will prescribe the regulations under which they will act "including regulations for the establishment and termination of joint boards, and for the procedure thereof." If exceptions are taken to the findings of the joint boards, it is the commission which takes appellate jurisdiction. The states have no real authority under this plan. The Federal authority simply permits them to play with the situation as a man may let his child put its hands on the steering wheel of a car. This pleases the child and gives it a sense of importance. But it is the old man who drives. This plan, in addition to being cumbersome, unwieldy, and involving much lost motion, is certain to cause conflict so long as the states retain a shred of their self respect.

It is, of course, clear that Congress can do this thing to the states, but unless it is necessary for the national welfare, it is a direct and reprehensible attack upon the rights of the states. And no one has shown that the national welfare requires it.

ANOTHER provision of the Couzens Bill which contains the seed of serious conflict between the Federal and the state authority is that relating to valuation. By it, the Federal Power Commission is "directed to value all operating properties subject to its jurisdiction" which means all important operating companies in the country, for they all either export or import some power, or do both.

Aside from the enormous expense to the taxpayers involved in this proceeding, and the time it would take—comparable in some degree to the cost in money and time of the valuation of the railroads by the Interstate Commerce Commission—this valuation at once would raise the issue of state valuation *versus* Federal valuation. Incidentally, many of these properties already have been valued by state authority and rates are based on such valuations. Maryland is now pro-

ceeding with the valuation of the last of the important companies in the state, the Potomac Edison. Valuation by the Federal Power Commission certainly would be duplicating the work of state commissions. All rates, those based on imported as well as on domestic current, would have to be fixed on either the state or the Federal valuation. That is obvious. The Federal authority would insist on using its valuation which would mean Federal determination of all rates; and Federal regulation, to the ultimate exclusion of state regulation.

And it is proposed to put this Couzens plan for valuation and regulation in the hands of the Federal Power Commission!

Well, we all know of the situation which developed in the Federal Power Commission and led to the passage of a bill reorganizing it. As Senator Couzens himself says "the reason for this legislation is generally understood." It certainly is. The commission may do better when it shall have been reorganized, but that remains to be shown. Anyway, aside from all other objections to the Couzens Bill, it would be wise, it seems to me, to confine the commission to the duties now imposed upon it by law, and see whether, after reorganization, it performs these duties efficiently and with satisfaction to the people, before putting upon it other duties, far more complicated and in much greater volume than it is now called upon to perform.

ONE instance alone is sufficient basis for this feeling. Under the permit granting the license for the Conowingo development, the prelicense costs of that project are to be fixed by the Federal Power Commission, the Public Service Commission of Pennsylvania, and the Public Service Commission of Maryland.

The Maryland commission has been waiting for more than three years to determine that matter. It has been prepared to go into it at any time. A meeting of the three commissions was held in the office of the Federal Power Commission on February 16, 1927. It was recessed, subject to the call of the chairman, the executive secretary of the Federal Power Commission, because the owners of the project insisted that until the pool behind the dam was completely flooded, the project area could not be determined. The plant has been in operation for two years or more, the pool has been flooded time and again, but the chairman has never called the commissions together again. Recently it has been proposed to go ahead with that work, but without the assistance and coöperation of the two state commissions, the Federal authority assuming full jurisdiction.

If that is a fair example of how the Federal Power Commission handles such a simple problem as fixing prelicense costs of an enterprise which it had authorized, then we will all be dead and forgotten before it could complete the valuation of all the companies which would be under its jurisdiction if the Couzens Bill should pass. And certainly, if the government should embark upon such an enterprise, it would cost the taxpayers a hundred dollars for every dollar they could possibly save in electric rates over the savings now being

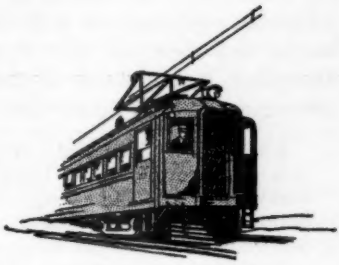
Why the Couzens Bill Is Unnecessary:

"BECAUSE *the amount of current passing in interstate commerce is small, only 11.8 per cent of the total kilowatt hours consumed;*

BECAUSE *the interstate phase of the situation has and can have no bearing on the price at which current is sold to consumers;*

BECAUSE *there is no substantial public demand for Federal regulation;*

BECAUSE *the work can be and is being done where the people so desire, more economically and more efficiently than it can be done by any Federal agency whatsoever.*"



made for them by the state commissions, even if they made any savings at all, which is very doubtful.

IT is also provided in Senator Couzens' bill that even in the field in which he proposes to "protect" state authority, the Federal authority shall act when "a substantial number of consumers" (the number to be determined by the Power Commission according to its own judgment alone) shall file with the commission a petition requesting Federal regulation of intrastate rates, charges, and services. In that one provision he upsets the whole apple cart of protection to state regulation, and confers on the Federal Power Commission authority to nullify any safeguard for the state he has put in the bill.

NOW, why is the Couzens Bill unnecessary?

Because the amount of current passing in interstate commerce is small, only 11.8 per cent of the total kilowatt hours consumed; because in some places at least the interstate phase of the situation has and can have no bearing on the price at which current is sold to consumers; because there is no substantial public demand for Federal regulation, and because the work can be and is being done where the people so desire, more efficiently than it can be done by any Federal agency whatsoever.

The Senator thinks the 11.8 per cent of power sent across state lines does not give a true picture of the situation. So he picks out the few states where the exports and imports of power are large in order to emphasize the necessity for his bill; because this interstate power has "hindered the complete and efficient regulation of intrastate electric utilities . . . if . . . it has not been

the means of defeating state regulation."

The figures show no such thing.

THE Senator's figures are reproduced here because what I shall say about their application to Maryland may apply equally well to other states, and show, as they show for Maryland, that Federal regulation is not required. His figures are:

EXPORTED: Vermont, 64.6 per cent; Wisconsin, 18.4; Iowa, 38.7; Maryland, 54.0; West Virginia, 54.0; South Carolina, 32.3; Alabama, 21.9; Louisiana, 39.2; Idaho, 62.2.

IMPORTED: Mississippi, 76.7 per cent; Utah, 53.1; Arkansas, 73.3; Missouri, 47.5; Nevada, 59.4; Maryland, 24.2; North Carolina, 27.3; Delaware, 66.2; Kentucky, 31.5; Minnesota, 25.9; Georgia, 27.2; Idaho, 40.3; Rhode Island, 25.9; West Virginia, 31.6.

These figures seem impressive, but they are not when reduced to kilowatt hours, and compared with the total amount of power consumed. The few states named are those which export and import the greater percentage of interstate power, yet the total exports of the nine states given amount to but 5,563,000,000 kilowatt hours of the total consumption of 91,656,000,000, or 6.069 per cent; something more than half of the 10,856,000,000 kilowatt hours of current that cross state lines.

As to the fourteen importing states (which include four large exporting states) their imports amount to but 4,814,000,000 kilowatt hours out of the total of 91,656,000,000 consumed, or 5.252 per cent.

NOW let us see how far Maryland needs Federal regulation because of its exports and imports of power.

Maryland exports 54 per cent of the power it generates and imports 24.2 per cent. In kilowatt hours they are: exports, 1,119,000,000; imports, 366,000,000.

Maryland has one big plant which sends out substantially all the power it generates, and nearly all the power exported from Maryland. It is that at Conowingo in Maryland, built with money provided by the Philadelphia Electric Company for the express purpose of giving that company a source of water generated power for Philadelphia, which it did not have. Under concurrent orders of the Pennsylvania Public Service Commission and the Maryland Public Service Commission whose joint consent was necessary before the enterprise could go ahead, the project was limited to a return to its owners of 7 per cent, not on the value, but on the actual cost of the property. That current is sold in Philadelphia and the rate at which it is distributed is regulated by the Pennsylvania commission as completely as if it was generated in Pennsylvania.

The generating company, the Susquehanna Power Company, is a Maryland corporation. Under that company's charter, Maryland has a right to power from the plant to the extent of the full flow of the river if ever it should require any substantial amount of it. In the order of the Maryland commission authorizing the project, it is provided that such current from it as may be sold in Maryland shall be sold by a Maryland corporation, or corporations, over which the commission shall have

full and complete control, and shall not be delivered or sold in any manner, shape, or form as to make it a part of interstate commerce. So the rights of both states are protected as completely as protection can be given by any authority, state or Federal.

MARYLAND also has one large source and several small ones from which it imports power. The large one is the plant of the Pennsylvania Water & Power Company at Holtwood in Pennsylvania, a dozen miles above Conowingo, on the Susquehanna. It supplies nearly all of our imported power. It is controlled by what are known as the Aldred interests which control the Consolidated Electric Light & Power Company of Baltimore, and supplies a large part of its production to the Consolidated Company. This plant at Holtwood was built before there was such a thing as a public service commission either in Maryland or Pennsylvania. Every contract for the sale of power to the Consolidated Company is on file with the public service commission. They have been subjects of analysis and discussion at public hearings in rate cases, and no evidence has ever been offered that shows they are not fair, honest, and aboveboard, or not advantageous to consumers of current in Baltimore.

So far as Maryland is concerned, Senator Couzens' percentages do not, in any degree, "indicate how necessary Federal regulation has become."

On the contrary, when taken with the facts, they show no reason at all for it, because the whole matter is amply regulated now by the states.

The Maryland commission knows the price to the distributing companies of all current brought into Maryland, and if that price were excessive the commission would not allow any excess over a fair price. We have had no difficulty in handling our interstate power problem, and if any of the other states mentioned by Senator Couzens have sent out to Congress a Macedonian cry for help, I have not heard of it.

It is absurd to say that because current crosses a state line in interstate commerce, the price at which it is sold to the receiving and distributing company is beyond control, and must be allowed in the expenses of the distributing company. The regulatory commission of the state into which it is imported knows, or can find out, to the fraction of a mill what it would cost the distributing company to manufacture its own current, or purchase it from some other company; and if the distributing company should be paying a price substantially in excess of what it would cost to produce it or buy it elsewhere, that naturally would be taken as evidence of collusion or fraud and the excess disallowed as an operating cost. So far as I know, the commerce clause has not yet been sanctioned as a cover for gouging or swindling operations.

THE Senator justifies his bill, and particularly that section of it which in the end would make Federal regulation of all rates inevitable, by pointing out that some state commissions have very limited jurisdiction, that Delaware has no commission at all, that some commissions seem to be inactive, that some have no

jurisdiction over rates of electric companies and that "some regulation is necessary for those electric companies which import power for distribution in those states which cannot, or will not, regulate them." Therefore, he proposes to give these helpless or backward states regulation through the Federal Power Commission whether or not they need or want it.

It must be admitted that Senator Couzens has distinguished authority for his position, no less than that of former President Coolidge.

In Mr. Coolidge's Memorial Day address at Arlington, Virginia, on May 30, 1925, he said:

> "If questions which the states will not fairly settle on their own account, shall have to be settled for them by the Federal authority, it will only be because some states will have refused to discharge obvious duties."

In spite of this very eminent authority, Senator Couzens properly might be reminded that the extent of the powers which the respective states give to their regulatory bodies, as well as how these bodies discharge their duties, is purely each state's own business. The powers may be broad and comprehensive, as in Maryland whose general assembly is disposed to amend and strengthen its public service commission law to meet new conditions as they arise, or there may be no commission at all, as is the case with Delaware. But so long as the people of the respective states themselves are satisfied, it is not the affair of the Federal Government.

THERE is not only no national need for Federal regulation, but no national problem as to rates. Rates for power are local, varying with each state and with each community in the state as local conditions vary. The states can handle these matters far better, more economically, more efficiently and with greater satisfaction to their people than can any agency of the Federal Government. And it is not rightfully the Senator's prerogative to use his eminent position in the Senate, and his prestige in the nation, to impose upon the states the force of the Federal power without their seeking it.

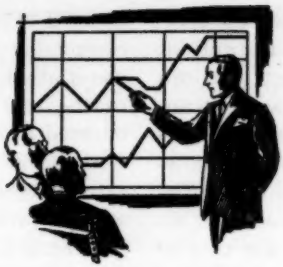
In my opinion, Senate Bill 3869 is dangerous, undesirable, and unnecessary, and may be actually vicious, and that any Senator or member of the House of Representatives who votes for it thereby confesses his belief that his constituents and his state government are impotent to handle a situation purely of state concern.

"Public Relations" *versus* "Press Relations."

"THERE are public utility executives who think that a sound public relations policy is merely getting favorable articles into the newspapers to build good will or to assuage the public's anger. That is not a public relations program any more than the paint on a house is the architecture. Deeper than that, a real public relations policy starts at the root of the organization's corporate life and deals with basic principles and practices."

—EDWARD L. BERNAYS

(An excerpt from his article on "The Public Utility that Is Misunderstood," to appear in the coming issue of this magazine.)



The Disputed Service Charge

Its Advantages and Its Disadvantages

HOWEVER equitable the service charge may be (points out the author), the customer who does not understand it may protest against it and thus inject a public relations problem in the task of maintaining a truly good rate structure. In this article the author advocates the service charge—and gives his reasons why.

BY CLYDE L. SEAVEY

PRESIDENT, CALIFORNIA RAILROAD COMMISSION

THERE are two factors that must be taken into account in any consideration of a service charge—equity and expediency. It is one thing to prove that a utility is justified in putting a straight service charge into effect; it is quite another to determine whether it is wise to do so without disguising it as something else.

Of course, the simpler an equitable rate structure is, the better. The virtue of the so-called "two-part" rate, which sets the service charge or consumer charge as distinct from the commodity or consumption charge, lies in the fact that it is both simple and equitable. It is vulnerable, however, to unthinking attack, because the service charge stands out like a sore thumb. Perhaps it should have been called by some better name.

The consumer who is used to a block rate or modified two-part rate, in which all or part of the service charge is concealed, may at first look askance at the straight service charge. And in some instances it may be best to leave the charge hidden until education takes place. If there is general revolt, however misdirected it may be, against what is truly a good rate structure, sufficient harm may be done by the consequent falling off of consumption or expense in maintaining proper public relations to offset or even outweigh the good results to be obtained from the immediate application of a true two-part rate.

WITH these considerations of the two major factors of equity and expediency, let us approach and examine the two-part rate with its much discussed incidental—the service charge.

In any discussion of utility rates it surely may be taken for granted that

the company which furnishes the service is not an eleemosynary institution; that the public body fixing and approving rates should act without unjust discrimination as between consumers, and that each consumer, however selfish he may be, will admit that it is just to charge him at least an amount which will cover the cost of the service rendered him.

The total costs incurred by a utility in giving service is roughly divisible into two parts:

(1) Consumers' costs, and
(2) Commodity costs.

CONSUMERS' costs are those expenses which are in large measure the same for all consumers, whether they use a large quantity of the commodity, a small quantity, or none at all.

These expenses include the cost of operation, upkeep, and inspection of the service connections, regulator, and meter installed to serve the consumer, the interest upon the money invested in this equipment, the cost of removing and repairing of the connections, regulator, and meter when such removal and repair is necessary, the cost of complaints and inspection of consumers' appliances, the cost of reading the meter, the costs of billing, collection of the bill, bookkeeping, accounting, and other necessary office expenses, and a proportionate share of the general and overhead expense of running the business.

All of these expenses continue as long as the meter and service are there ready for use at any and all times by the consumer whenever he chooses to turn on the commodity. They go on just the same whether he chooses to use large quantities of the commodity or whether he does not use it at all. They are a definite part of the cost of service and must be covered by the revenue derived from the sale of the commodity. If the rate charged for the commodity is of a type wherein the consumer who uses little or none pays a small minimum charge, substantially less than the above-mentioned costs, then the commodity cost must be raised to pay the difference and those consumers who use more of the commodity are made to pay that difference. This is almost elementary, yet gas and electric companies seem to experience great difficulty in driving these points home to their patrons.

THE second group, or commodity costs, includes all expenses not included under the first group.

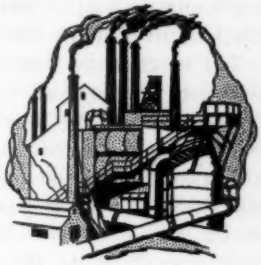
These expenses vary more or less directly with the quantity of the commodity produced or sold and the demand of the consumers, and include such items of expense as the cost of manufacture or purchase, the costs of transmission and distribution, the costs of operation and upkeep of all of the property except consumers' services, regulators, and meters, the return upon such investment, the cost of acquiring new business, the remainder of the general and administrative costs, taxes, insurance, uncollectible bills, and other items.

RATE structures have been modified as the demand and service of the commodity develop with the purpose not only of preserving equity between consumers but as an aid in reducing the cost to the consumer. Varying forms and types of rates

If the Service Charge is Justifiable, Why Should Not the Storekeeper Demand It?

THE complete answer is that the storekeeper is not compelled to keep a complete stock on hand ready for instant use. He is not forced to sell to any customer or class of customers at less than cost. He does not have to maintain 24-hour delivery service for the benefit of customers buying yeast cakes or penny candles.

"These costly obligations are imposed by law on public utility companies."



have been in use. The first type used was a flat monthly charge where a consumer used as little or as much as he pleased for a fixed monthly charge —all consumers' monthly bills being the same. The aggregate of all of the monthly bills, under this type of rate, must cover both the consumer and commodity costs and bring a proper return to the utility. Needless to say this eventually proved to be arbitrary, discriminatory, and impracticable. It has since been abandoned except by some water companies.

Another type of rate is the so-called block rate with a specified minimum monthly charge. Here again the revenue derived from the rate must cover the total cost of service and return.

FINALLY we have the so-called two-part rate.

This two-part rate must also produce sufficient revenue to cover the total cost of service and return. This type of rate differs from the block rate in that the consumer charge and commodity charge are definitely set out in the rate structure.

Under this type of rate each consumer, whether he uses any commodity or not, is charged each month with a consumer charge to cover the expense of his having service ready at his disposal at all times. Whether or not he uses any of the commodity has no effect upon the cost of maintaining the service ready for his use. The service connections, regulator, and meter that are installed on his premises must be kept up, inspected, and ready for operation whenever he chooses to use them, the interest upon the investment in this equipment goes on, his meter must be read each month, a bill must be sent to him each month, the bill must be collected, and the utility must keep a record of his account.

Under this type of rate, each consumer pays his consumer charge as such. This relieves the commodity charge of the necessity of carrying the consumer costs and thereby makes it possible for the commodity rate to be lower per unit than would be the case in the block rate.

In order to show the effect as between the last two forms of rate we will take an example used recently in a gas rate case before the California Commission: (See the table at the bottom of page 595.)

Let us consider first the consumer who uses no gas at all.

Under the (A) rate his monthly bill would be 75 cents and under the (B) rate $1. If the actual consumer cost is $1 per meter per month, then under the (A) rate this consumer only pays 75 cents, the remaining 25 cents being paid by the consumer who uses gas. Under the (B) rate the consumer who uses no gas pays his $1 consumer cost, as he should.

Consider next the consumer who uses only 500 cubic feet of gas per month. Under the (A) rate, his bill for this amount of gas would still be 75 cents and under the (B) rate it would be $1.50. This consumer, under the (A) rate, is escaping payment of 25 cents of his actual consumer cost of $1 besides getting 73 cents worth of gas for nothing. The other consumers under the (A) rate, therefore, are required to pay not only his 25 cents deficiency of consumer cost but are also required to pay 73 cents for the 500 cubic feet of gas that he gets free of charge. Under the (B) rate he would properly pay for both his consumer cost of $1 and the gas he uses. However, under the (B) rate he would get his 500 cubic feet of gas for 50 cents instead of 73 cents, the lower commodity rate being due to the proper allocation of consumer cost.

The two classes of consumers mentioned above are called the convenience users and comprise about one third of the total consumers of an average gas utility.

Those consumers who maintain families and homes, generally classed as the working men whose families do their own cooking, heating, and washing, consume more gas. The average monthly consumption of this class of consumer will approximate 5,000 cubic feet per month.

Next, consider the consumer who uses 5,000 cubic feet of gas per month. Under the (A) rate his bill would be 7.25. Under the (B) rate it would be $6. The difference between the two bills, namely $1.25, is the amount that this gas-using consumer pays under the (A) rate that should have been paid by the consumers using little or no gas.

If a consumer uses 10,000 cubic feet of gas per month his bills under the two rates would be as follows:

(A) Rate	$13.50
(B) Rate	11.00
Difference,	$2.50

In this case, under the (A) rate, he pays $2.50 of the small users' bills. This continues on, the more gas the consumer uses under the (A) rate, the more he pays to make up for the small users' deficiency.

Of course, it might be theoretically possible to correct inequalities between consumers by increasing or decreasing the unit charge as the use fluctuates, applying the service charge only with no use of the commodity. But that would be so complicated and cumbersome, so subject to mistakes, and so expensive of administration, that it can hardly be considered as practicable.

THE service charge part of the rate, standing out as it does, may make it appear as if the consumer is making a payment for something not actually served to him. This is positively not the case, however, for the consumer expenses are a definite part of the cost of service and must be paid in any event. And, as has been shown, in the case of the block rate, where the convenience user pays less than his share the substantial user must make up the difference.

Occasionally, when a two-part rate is first suggested, the political psychologist seizes the opportunity to make capital out of it. It is very easy to start trouble on the basis of aiding the legitimate consumer, even when he is actually being injured by the withholding of the rate. And it is not always the politician who starts the trouble.

In a recent matter before this commission, involving a new natural gas service the utility offered for filing a two-part rate where the old artificial gas rate had been a block rate with the service charge partly covered but hidden. Before the commission could take the matter up for consideration the service charge was being attacked in the local press.

A very careful analysis of the situation has convinced us that there was no real protest by consumers but that the matter started because of the zealous endeavor of one party to outdo the other in representing the interest of the public against a utility. The amazing thing is that this same utility for several years has been giving electric service in this same territory on a two-part rate schedule which was put into effect without protest and apparently has given entire satisfaction. Because of the "situation" created, temporary rates were put into effect with the filing of a modified two-part rate, in which a service charge was thinly veiled, sufficient to protect the legitimate user.

HOWEVER, this experience is unusual in California. Generally, where presented, the service charge has been received without any but incidental protest which has been met by individual explanation.

Of course, when unthinking and unjust prejudice has been raised it takes time to educate several hundred thousand consumers and their leaders. Calm consideration of this form of rate has always resulted in its adoption.

For instance, in the city of Santa Barbara in 1928, when a case involving rates for gas was under consideration and where the existing schedule in the block form had been in effect

(A) BLOCK RATE:

First 5,000 cu. ft. per meter per month	$1.45 per M cu. ft.
Next 5,000 cu. ft. per meter per month	1.25 per M cu. ft.
All over 10,000 cu. ft. per meter per month	1.00 per M cu. ft.
Minimum charge per meter per month	0.75.

(B) TWO-PART RATE:

Consumer Charge per meter per month	$1.00
Commodity Charge; all gas at	1.00 per M cu. ft.

Four Reasons Why the Two-Part Rate Form, Carrying the Service Charge, Is Preferred:

"(a) It equitably allocates to each consumer the costs which he should bear, no matter what is his use of the commodity;

"(b) Such allocation makes possible a lower commodity rate which encourages a larger use that ultimately causes a further reduction in the commodity rate;

"(c) Its application not only decreases the bills of the substantial user but removes an unjust discrimination against him under which he helped pay the deficiency of the convenience user;

"(d) The removal of discrimination is conducive to better public relations, cheaper administration on the part of both the regulating body and the utility, and better service at a lesser cost."

for years, the two-part schedule was suggested. All parties made a careful investigation, with the result that this form of rate was endorsed by all, including the city council, the chamber of commerce, the building trades council, the public utility, and individuals. The rate was adopted and no complaint has been registered against it.

In fact, increased usage under this rate has already resulted in a reduction in the commodity charge.

More recently, in the great metropolitan area around San Francisco Bay, involving some twenty municipalities, where the old block rate form was in existence for artificial gas, a change over to natural gas with this two-part rate was accomplished without protest. The municipalities were ably represented by attorneys and experts familiar with all the details of rate making.

No discussion of the equity of the service charge would be quite complete without some mention being made of the often advanced analogy of a utility to a storekeeper.

Why, it is asked, if the service charge is justifiable, should not the storekeeper demand a service charge per customer for maintaining a stock?

The complete answer is that the storekeeper is not compelled to keep a complete stock on hand ready for instant use. He is not forced to sell to any customer or class of customers at less than cost. He does not have to maintain 24-hour delivery service for the benefit of customers buying yeast cakes or penny candles.

These costly obligations are imposed by law on public utility companies. It creates a strong equitable claim in favor of giving to them the right to charge each customer for the exact amount of service which he re-

quires—and such charge should be a true charge including all the elements of cost involved in standing ready to serve, as well as the mere cost of commodity consumption.

It is my belief that the two-part form of rate described, carrying the so-called service charge, as compared with the block-minimum form of rate, is more advantageous to the consumers as a whole and the utility, for the following four reasons:

(a) It equitably allocates to each consumer the costs which he should bear, no matter what is his use of the commodity.

(b) Such allocation makes possible a lower commodity rate which encourages a larger use that ultimately causes a further reduction in the commodity rate.

(c) Its application not only decreases the bills of the substantial user but removes an unjust discrimination against him under which he helped pay the deficiency of the convenience user.

(d) The removal of discrimination is conducive to better public relations, cheaper administration on the part of both the regulating body and the public utility, and better service at a lesser cost.

Who's Intolerant?

"I was in our library the other day where we have our newspaper clipping department. I asked for the envelopes containing the public utility newspaper clippings. I was given three well-filled envelopes containing such clippings that have appeared in New York newspapers during the last several years.

"In going through the several hundred clippings the most predominant thing about them was the criticism leveled at the public utilities by both public officials and private citizens.

"Whenever a public utility makes a formal request for an increase of rates or an extension of some privilege, invariably some one, either in an official capacity or as a private individual, assumes an intolerable disposition and attempts to block with some legal measure the utility's request. This procedure has happened so often and so much has been published about it in the newspapers, that almost every time a public utility makes a request for something, the general public looks upon the matter as little less than a brazen holdup. The public utility may be perfectly justified and within sound reason for making its requests, but the public fails to comprehend a just reason. The result of this has caused a great misunderstanding by the public of public utilities.

"The blame for this intolerant attitude can be placed where it belongs—at the door of the public utilities. Even a superficial analysis will disclose that the public utilities are more emperious than the public, which eventually pays the bills."

—Edwin S. Friendly
BUSINESS MANAGER, NEW YORK *SUN*

4 Misconceptions of Commission Regulation

As Seen by a Commissioner

By HYLEN H. COREY
PUBLIC SERVICE COMMISSIONER OF OREGON

I. ***That the commissions are inferior tribunals and are not entitled to the respect usually given to a court of law.***

A SHORT while ago a certain attorney, purporting to represent patrons of a telephone company before the Nebraska commission, was barred by Commissioner Randall of that board from further participation in the proceeding.

The commissioner had become offended when this barrister, in addressing a mass meeting, claimed that he had investigated the social relationship existing between members of the commission and officers of the telephone company. He had even suggested that it was impossible for the "people" to get justice from the commission in any case involving that company. When he refused to apologize for this reflection on the honesty of the commission he was told that he was out of the case.

What resulted from this action?

The proceeding was postponed until such a time as the patrons could obtain new counsel. This probably incurred additional expense and delay, for a new lawyer has to familiarize himself with many details before he can take up such a case where another lawyer leaves off.

In view of this trouble, which hindered not the guilty lawyer but his innocent clients, it is not surprising to find many commissions in the interest of fair play overlooking such an unfair and even discourteous attitude in rendering their decisions. A client's case may not be devoid of merit although presented in an unbecoming and belligerent manner. Of course, in this particular Nebraska case, Commissioner Randall undoubtedly had good reason to act as he did, and I certainly sympathize with him because I have suffered similar humiliations while sitting with the Oregon commission.

ON a number of occasions I have witnessed the legal representative of complainants before the public service commission, egged on by disparaging public utterances of the press or by ill-advised persons, adopt an attitude throughout the proceeding as patronizing as if he were appearing before a rural justice of peace. Aside from the respect due to the state appearing, however humbly, in the per-

son of its duly authorized tribunal, certainly such an attitude is not sportsmanlike nor is it in keeping with the high ideals and traditional reverence of a learned profession for constituted authority.

This attitude can usually be traced to one of two causes; either the attorney has not taken sufficient care to prepare his case and is trying to bluff his way through the proceeding with a smoke screen of indifference or sarcasm; or else he does not himself fully appreciate the legal significance of the commission's jurisdictional powers and duties.

But, regardless of the cause, what effect does this attitude have on his client—or, for that matter, on other lay parties to the proceeding?

Unquestionably their confidence in, and respect for, commission regulation is lessened. Naturally, if a man sees his own lawyer scoffing at a tribunal he is not inclined to take it very seriously himself. In this way have certain members of the bar lent themselves, perhaps unconsciously, to the business of undermining the security of utility regulation.

WHAT do the commissioners do about it? Unfortunately, there is very little they can do about it—for as I have already intimated to rebuke the counsel would very often be to prejudice the cause of his client. The sworn duty of the commissioners requires them to care for the interests of all parties appearing before them, however discourteously represented.

This condition reminds me of a passage in St. Luke's Gospel:

> "Woe unto you lawyers! for ye took away the key of knowledge; ye entered not in yourselves and them that were entering in ye hindered!"

Apparently even the Jerusalem Bar Association had its critics. Indeed, I am inclined to believe that St. Luke ought to be made the patron saint of public service commissioners, for I am sure that those words express the thoughts that enter the minds of commissioners when they see lawyers leading the parade of uninformed but possibly well-intentioned citizens to sneer at regulation.

LEAVING this particular brand of lawyer (which, I am glad to say, constitutes only a small fraction of that learned profession), let us glance out over the rest of the opponents who have massed themselves consciously or unconsciously against commission regulation. Broadly speaking, I am of the opinion that most of the criticism against the commissions reflects a general public misconception concerning the purposes and practices of the state commissions.

This unjust criticism is not confined to the average uninformed lay voter and the type of lawyer already mentioned; it includes politicians, merchants, bankers, and even the members of the "greatest deliberative body in the world"—the United States Senate. When we examine closely into this criticism we rarely find a new or original argument; it is an incessant repetition of the usual and well-known attacks.

Now this dearth of new material is a symptom. It is a symptom that the leaders in the revolt, the men responsible for putting the same old balderdash into circulation, are not sincere in their own beliefs. It is a sign that

they are "after something," whether it is a political office or a franchise, or mere political publicity.

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2. ***That the commissions are politically minded and favor large corporations as against individual complainants.***

THIS charge is directed against the commissioners themselves rather than against their official dignity or rank. It charges that commissions are politically rather than judicially minded; that they favor large utilities or other corporations as against small consumers, individual complainants, and the obscure citizenry.

The regulation of public utilities, as generally adopted throughout the Union, impresses me with the results obtained and the vast possibilities in the way of public benefits that will further be afforded in the future. I believe that the very history of the commissions' achievements is the best evidence possible to refute any aspersion upon the character of the commissions involving their fairness or sincerity.

The conclusion seems inescapable that the strong and efficient regulations made possible by the state laws administered by state commissions and their staffs, clothed with powers never before in history placed upon an administrative and quasi-judicial body with its simplified procedure, has become a mighty factor in the public welfare. Often the mere mailing of a letter brings prompt results; sometimes a matter of great consequence to the public has its origin in the mailing of a letter directing the commission's attention to a meritorious matter that may have heretofore escaped the commission's attention.

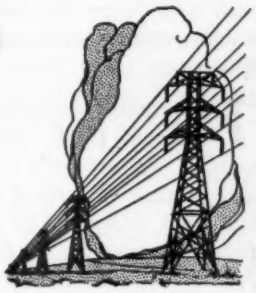
I SEE no fundamental error or defect in the general plan of regulation. There may be minor desirable changes or additional laws to strengthen some features of public utility laws, but such small changes do not cause me to question the general results now obtained from state regulation.

To be specific, the Oregon Public Service Commission has, upon its own motion, brought investigations which have resulted in vast benefits to the people of Oregon. These cases in which the commission itself took the initiative have resulted in the saving to the citizens of Oregon of hundreds of thousands of dollars in reduced rates, and, of equal importance to the public, increased and improved service. Public records show that other states generally have enjoyed similar results from state regulation.

Of course, we welcome public discussion of these subjects for the purpose of disseminating information. If regulation is sound, it will not be affected adversely by public controversy. If it is found to be unsound in any respect, it will be improved. All thoughtful contribution will receive public attention and in the normal course of evidence these expressions on regulation will give way to logical conclusions based on facts. Regulation will reap the benefits of a nation-wide discussion and the educational results will enable the public to understand what regulation is and how it works. Through public discussion the facts will come to the front in time and will lead to public action that will

The Political Motive Behind Some Criticism

"UNJUST criticism of the commissions is not confined to the average uninformed lay voter. . . . When we examine closely into this criticism we rarely find a new or original argument; it is an incessant repetition of the usual and well-known attacks. Now this dearth of new material is a symptom. It is a symptom that the leaders in the revolt, the men responsible for putting the same old balderdash into circulation, are not sincere in their own beliefs. It is a sign that they are 'after something,' whether it is a political office or a franchise, or mere political publicity."



make regulation stronger and immune to political influences and attacks.

But all this is true only provided that the public hears both sides of the story. So far, the commissions' version of the controversy seems to me to have been sadly neglected. It behooves the commissions to present their own side of the case and demonstrate the errors of current political attacks.

On the other hand, if we let the opposition go on capturing the attention and imagination of the public, ultimately it will also capture its opinion. I need not recall what folly can be accomplished by the will of the public when it its wrongfully manipulated.

THE regulation of public utilities is far from being political, although a number of people do not seem to think so. They do not hesitate to charge the commission with favoritism toward corporations and to threaten dire political results if decisions are rendered unfavorable to the contentions of ratepayers.

Fortunately for all concerned, public utilities are not regulated under coercion, neither are they regulated according to the whims or caprices of the state commissions. The commissions are not moved in their acts by any consideration of the political punishment that may be visited upon them for failure to meet the views of a number of people in the locality in which the public utility under consideration is located. I have a wide acquaintance with state commissions and their decisions, I know them to be honest and conscientious servants of the public. They are sworn to uphold the law and they aim to administer it without fear or favor, to do exact justice, and perform their sworn duties, whether or not that course meets with the disapproval of certain politicians. Likewise, they respond gladly to the dictates of the law and their own consciences for the benefit of the individual as quickly as they respond to the complaint of a large group of people. Take individual complaints, for in-

stance; commissions' records show that by far the greatest portion of their business consists in adjusting complaints of individuals, and many such complaints are handled expeditiously and satisfactorily by correspondence.

THE commissions are not, as some seem to think, arbiters of economics, but tribunals created by law and generally informed by experience, and their orders to be valid must be founded upon the facts and in conformity with the law of the land as it exists.

The assumption by those who criticise the commissions for granting any request of a corporation, is that the corporations are always wrong and their critics always right; that, therefore, a decision in favor of a corporation's contentions shows bias or evidence of improper influence. This is usually the alibi of defeated litigants. It never occurs to them that they themselves might have been wrong.

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3. *That the commissions "guarantee" to utility companies a certain amount of return on their investment, and that they fix rates accordingly.*

As time is measured, it has not been long since America, as a nation, consisted of a few villages and farming communities scattered throughout the extreme eastern portion of the United States. We now have a national population of one hundred twenty-two million, a vast majority of which lives in congested urban centers. Our individual rights to live and the free pursuit of our vocations have come to be intertwined with countless similar rights of our fellowmen.

For the protection of these interwoven rights we have to depend upon governmental regulation to a far greater extent than did our forefathers when communication between persons and localities was very limited and they furnished their own transportation. Their homes were lighted by candles dipped by themselves and their water supply came from their own springs or wells.

Unlike many older settlements in foreign lands, where those necessities are still lacking, fortunately, our communities harbored men and women imbued with the pioneering spirit, citizens with vision who early realized that in order to secure the blessings of those vital necessities for the congested centers of population, it would be necessary to organize private capital and enterprise. For more than a century those pioneering citizens were hailed as public benefactors and we Americans deemed ourselves rich in our heritage.

LATER those organizations were declared to be public utilities. They occupy the public streets and highways with the consent of the state in conducting a business, which the state itself might perform but which it has quite generally delegated to those enterprising citizens who are willing to put their money into public service. The utility is granted certain sovereign powers and privileges, such as the power to exercise the right of eminent domain and to occupy the streets.

Owing to the existing hazards to utility capital and the desire to protect their investment, unscrupulous meth-

ods were sometimes resorted to by utility operators and conditions became unbearable to the public. For a short period competition between utilities sometimes aided to secure favorable rates and services. Such competition, however, was of short duration. Eventually, the states delegated to the commissions the legislative and quasi-judicial powers to fix the rates and regulate the service of these essential servants of the public.

The fundamental purpose of the public utility laws providing for state regulation is to secure the maximum service at a minimum rate with due safeguards against discrimination.

A STOCK saying of many business men is "my business is not guaranteed a reasonable return." They seem to overlook the fact that their business is not limited to any return and that operators of private businesses are free to buy and sell and choose between customers. They have absolute discretion in credit extension and wages.

Another fact that these merchants overlook is that the commissions do *not* "guarantee a reasonable return" to public utilities. They simply permit utilities to earn such a return if they are able to do so. They merely fix a rate which is most likely to procure such a return. The action is purely legal. Commissions may regulate rates but they cannot regulate the law of economics.

That is why, although under Federal decisions commissions seem to be required to fix rates for street railways calculated to yield a return in excess of 7 per cent, Chairman Harold West of the Maryland commission pointed out that there was not a single street railway company in the eastern part of the United States actually earning, to his knowledge, as much as six per cent return on its investment. If commissions guarantee returns they are certainly falling down on their guarantee to these traction utilities.

THE fact of the matter is, the commissions are merely following out a mandatory duty imposed upon them by the Federal Constitution when they fix utility rates that are calculated to yield a reasonable return. To do otherwise would be to incur court reversals that would cost taxpayers much money through protracted and unnecessary litigation.

And why should not utilities receive such protection?

How else would they survive the

¶ "IF *regulation is sound, it will not be affected adversely by public controversy. If it is found to be unsound in any respect, it will be improved. . . . Regulation will reap the benefits of a nation-wide discussion and the educational results will enable the public to understand what regulation is and how it works. Through public discussion the facts will come to the front in time and will lead to public action that will make regulation stronger and immune to political influences and attacks.*"

abuse of governmental powers to limit their return?

If the private business man, be he butcher, baker, or candlestick maker, cannot make a profit in one place what does he do? He closes up and goes to another place. If he gets too deep in the hole he goes through bankruptcy court and comes out with a clean slate.

When a utility is losing money, what happens?

It has to stay there and take its punishment.

It has thousands, possibly millions, of dollars forth of investment literally spiked to the ground. Why should not the Constitution protect such an investment from arbitrary confiscation?

If all the people understood that, as a result of this prohibition, the Constitution stands as a great sea wall, keeping back the waves of hate and prejudice, restraining all human disposition to abuse power conferred upon private persons and public officials, there would be a wonderful revival of confidence and a sense of gratitude toward our unexcelled form of government.

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4. *That commissions allow a return on watered stock values and on excessive franchise values of utilities.*

THE manner of ascertaining the reasonableness of rates involves a consideration of the value of the property used and useful in serving the public. This value is construed by the courts of the land to be the fair present value as distinguished from the investment, the latter may be actually more or less than the value to be used as the rate base.

It necessarily follows that the oft-repeated statement by the uninformed about commissions allowing a return on watered stock and excessive franchise values is not true. The amount of stocks and bonds, outstanding are practically disregarded, and only such franchise values are allowed as correspond with the actual legitimate expense of securing the franchise. This franchise value is infinitesimal compared to the value of the entire plant. But this is just one more fallacy that keeps going the rounds.

THE principle of government regulation of public utilities has been generally adopted in this country, in both Federal and state matters. All the states with but a single exception —Delaware—have laws regulating intrastate railroad or public utilities or both. State regulation on a comprehensive plan dates from 1907, when the Wisconsin and New York statutes were passed. Since that time no state having adopted regulation has taken a backward step by abandoning public regulation.

In other words, state regulation of public utilities is a matter which has become firmly fixed as a branch of state government and one that will not be permanently relinquished by the states. Regulation has been given a thorough trial during the past twenty-three years and those who suggest its abandonment have not even started to prove their case.

The Value of One State Commission Is Appreciated

SOONER or later something happens to remind us of a good thing which we have not fully appreciated. We become sick. Then we begin to understand the value of health. We grow old. We would like to be young again. The old adage is: "We never miss the water till the well runs dry."

Once in a while something comes up to upset our electric service. Our telephone line will go out. Perhaps a water pipe will burst. Our transportation lines may be tied up. Then we are impressed with the importance of these utilities.

We have had commission regulation of utilities in many states so long that we take it as a matter of course. If it is noticed at all, it is only for the purpose of criticism. Its benefits are forgotten or overlooked. Here, too, events occasionally happen to remind us of the reasons which led to the adoption of this regulatory policy and why it has continued.

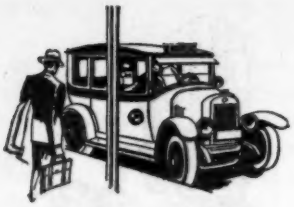
Not long ago the consumers of a private water company in a town in New York state became dissatisfied with the company's rates. The ratepayers appealed to the commission for relief, but the commission in New York state was without jurisdiction over private companies. So the ratepayers wanted the jurisdiction of the commission extended.

Without a state commission there might be no relief for a community like this except by direct action by the legislature. In the absence of regulation rates are usually fixed by contract. This was the way it was done prior to state commission regulation.

Under commission regulation, when, by change of conditions, contract rates become too high, ratepayers may appeal to a commission in most states to have them lowered because the commissions may disregard the contract. This rule was established a number of years ago at the insistence of ratepayers to protect them from improvident contracts. Since then it has often worked to protect the utilities when circumstances have made these contracts unfair to them. It is a good rule, and it works both ways.

The situation to which we have alluded illustrates the advantage to the ratepayers of having a state body to which they can appeal when they have a grievance against a utility company which they believe calls for prompt redress. It is also the least expensive way of adjusting differences.

Henry C. Spurr



The Unregulated Taxicab

What the State Commissions Are Doing about It

"THERE ought to be a law," is the complaint upon the lips both of the bewildered street railway and also of the taxicab operators as they witness the disastrous effects of price wars brought on by the troublesome cut-rate cab. As a matter of fact, there is already such a law in a number of states. This article points out the location and the scope of such laws, and tells how they are being enforced.

BY FRANCIS X. WELCH

A SURVEY by the editorial staff of PUBLIC UTILITIES FORTNIGHTLY of the most recent laws and statutes of the various states respecting utility regulation reveals the somewhat astonishing fact that there are twelve states in the Union, and the District of Columbia, where some provision is apparently made for the regulation of the taxicab industry by the state public utilities or public service commissions.

This revelation is astonishing in view of the fact that, with the exception of the District of Columbia and Pennsylvania, none of the commissions so empowered appear to have exercised this authority to the extent of actually fixing fares charged by taxicab operators, or eliminating the wasteful rate wars which are going on in so many of our larger cities.

A closer inspection of the matter, however, will show that this inaction does not of necessity reflect on the competence of the commissions involved. First of all let us name these twelve states, keeping in mind the District of Columbia. They are Arizona, Arkansas, Colorado, Connecticut, Maryland, Montana, Nebraska, North Carolina, Oklahoma, Pennsylvania, Rhode Island, and West Virginia.

IF we glance down the second ruled column of the chart accompanying this article, we find that in Arkansas, Montana, North Carolina, and to a great extent in Colorado, the commissions' jurisdiction does not include municipalities. Obviously, this means everything in taxicab regulation, since there is very little trou-

ble with the taxicab situation in rural districts. It is not surprising, therefore, that we have heard nothing of taxicab regulation from these three states, although the Colorado commission did have something to say about the rates for sight-seeing taxicabs around the Pike's Peak section.

The Nebraska commission can next be eliminated when we consider that it has authority over only one phase of taxicab activity; to wit, liability insurance, which it regulated in a very thorough fashion in *Re* Liability Insurance for Taxicabs, P.U.R. 1929D, 561.

Next let us consider Maryland and West Virginia. The statutes that give jurisdiction to these commissions are very broad, and for that reason somewhat vague and doubtful. It is necessary for these commissions to go step by step and have each stage tested by the courts. It was only a short time ago that the Maryland commission decided to act on the advice of its distinguished counsel, the former Senator W. Cabell Bruce, who was of the opinion that the language of the Maryland statute permitted that commission to require the filing of liability insurance by a taxicab utility as a condition precedent to obtaining a certificate of convenience and necessity,—*Re* Bell Cabs, Incorporated, P.U.R.1930D, 260.

THE West Virginia statute is even more vague. It gives the commission general jurisdiction to require "every person, firm, or corporation engaged in a public service business" to maintain adequate service at reasonable rates. It was not until Charleston Interurban R. Co. *v.* Smith, P.U.R.1915E, 177, that this act was held to cover regularly scheduled motor busses, and even in that case the commission declined to take action because it did not see any necessity for it.

It is questionable, therefore, whether the West Virginia act would cover taxicabs and it is small wonder that the commission of that state hesitates to proceed in the absence of more specific statutory powers. The existing law is far broader than, for instance, the Illinois act which gives its commission power over "the transportation of persons or property between points" within the state. Yet the Illinois commission decided that this did not include taxicabs, *Re* Redd Cab Co. (1924) P.U.R.1925C, 420.

THESE eliminations leave for our consideration Arizona, Connecticut, Oklahoma, Pennsylvania, Rhode Island, and the District of Columbia.

The last-named jurisdiction has been a veritable pioneer in active taxicab regulation, when as early as 1915, in Terminal Taxicab Co. *v.* Kutz, 241 U. S. 252, P.U.R.1916D, 972, its attempts to regulate cab fares in the capital city resulted in the "Dred Scott decision" of taxicab regulation—the ruling of the Supreme Court of the United States to the effect that only taxicabs soliciting business on the streets or public places could be regulated as common carriers. This decision exempted from regulation "liveried cabs" which are cabs operating out of private garages on calls, telephone or otherwise, from specific patrons.

Since that time the District commission has refused to increase the

Authority of the State Commissions over Taxicabs

State	General Jurisdiction		Extent of Jurisdiction						
	Within State	*Within City Limits*	*Certificates of Convenience*	*Rates*	*Insurance*	*Filing Reports*	*Security Issues*	*Service and Equipment*	*Citation of State Law*
Alabama	No								
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Code 1929, c. 15, § 3
Arkansas	Yes	No	Yes	Yes	Yes	No	Yes	Yes	L. 1927, Act 77
California	No								
Colorado [1]	Yes	(Footnote)	Yes	Yes	Yes	Yes	No	Yes	L. 1927, c. 134
Connecticut	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	L. 1929, c. 161
Delaware	No								
District of Columbia	Yes	Yes	No	Yes	No	Yes	Yes	Yes	See 241 U. S. 252
Florida	No								
Georgia	No								
Idaho	No								
Illinois	No								
Indiana	No								
Iowa	No								
Kansas	No								
Kentucky	No								
Louisiana	No								
Maine	No								
Maryland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Code 23: 361
Massachusetts	No								
Michigan	No								
Minnesota	No								
Mississippi	No								
Missouri	No								
Montana	Yes	No	Yes	Yes	Yes	Yes	No	Yes	L., 1929, c. 141
Nebraska	Yes	Yes	No	No	Yes	No	Yes	No	L., 1929, c. 147
Nevada	No								
New Hampshire	No								
New Jersey	No								
New Mexico	No								
New York	No								
North Carolina	Yes	No	Yes	Yes	Yes	Yes	No	Yes	L., 1927, c. 136
North Dakota	No								
Ohio	No								
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	L., 1929, c. 253
Oregon	No								
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	?	Yes	L., 1925, p. 587
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	3722: 1427
South Carolina	No								
South Dakota	No								
Tennessee	No								
Texas	No								
Utah	No								
Vermont	No								
Virginia	No								
Washington	No								
West Virginia	Yes	Yes	No	Yes	?	?	No	Yes	P.U.R.1915E, 177
Wisconsin	No								
Wyoming	No								

[1] The Colorado commission does not have jurisdiction in certain home rule cities under decisions of the state supreme court.

metered rates of one company in *Re* Terminal Taxicab Co. P.U.R. 1921E, 546, and is even at this writing engaged in a thorough and comprehensive investigation of all cut-rate taxicab operations in Washington which, it is hoped, will clear up the chaotic conditions owing to cut-throat competition between flat rates now obtaining in the capital city. Unfortunately, this commission met a reversal at the hands of the District of Columbia Supreme Court last year which denied to it the power to compel the filing of liability insurance by cab operators. Legislation to cure this defect barely missed passage at the last session of Congress, and will probably pass in the near future.

THE Pennsylvania commission has consistently regulated competition between taxicabs in the Keystone state in an intelligent manner for a number of years. It even went so far in Rinebold *v.* Webb (1927) P.U.R.1928A, 604, as to whittle away at the Supreme Court's ruling in Terminal Taxicab Co. *v.* Kutz, *supra,* by holding that the public display of a sign on the front of a so-called "livery garage," as well as solicitous advertisement in a telephone directory, was sufficient to warrant regulation by the commission.

Similarly, it even interfered to see if the alleged imitation by one taxicab company of the colors and painted insignia of another company constituted unfair competition, or a deception to the public, Pittsburgh Transp. Co. *v.* Yellow Cab Co. (1928) P.U.R. 1929A, 631. As a result of this supervision, the taxicab situation in Pennsylvania is probably as satisfactory as any other state in the Union, notwithstanding its numerous cities and congested urban districts. At this time this commission is considering the Philadelphia situation with a view to eliminating rate cutting.

THE Arizona, Rhode Island, Connecticut, and Oklahoma commissions have not had full jurisdiction over taxicabs long enough to produce much in the way of definite results, but the latest word from Providence would appear to indicate that the commission of that state will very shortly hand down an order that will be a landmark in taxicab regulation. Likewise, the Connecticut commission is quite active.

On November 4, 1929, just a few months after the effective date of the law extending its jurisdiction, the Connecticut commission, in *Re* City Cab Service, Inc. (1929) P.U.R. 1930A, 113, denied applications for fifteen new cabs to be operated in Hartford. This decision, which discusses taxicab rates, service, and methods for gauging monopoly and competition, is well worth reading by anyone interested in taxicab regulations.

Nothing has been heard as yet from Oklahoma, but it is probable that the taxicab situation in that state has not as yet reached troublesome proportions. A similar condition probably obtains in Arizona.

It should further be remembered that this study of taxicab law was confined solely to regulation by state public utilities and public service or railroad commissions. It did not investigate regulation by municipalities, which is very widespread and appar-

ently very unsatisfactory. In South Carolina, for instance, taxicabs are under the jurisdiction of the state highway commissioner.

To summarize the findings of this survey, it appears that only thirteen jurisdictions have any provision at all for regulation by the state commission, and of these only six commissions have full and clear cut powers. They are situated in Arizona, Connecticut, District of Columbia, Oklahoma, Pennsylvania, and Rhode Island. It further appears that such regulation, scarce as it is, has had a highly satisfactory result considering that four of the states have only recently (1929) endowed their commission with such powers.

What is needed now is legislation in thirty-six states to give plenary regulatory powers over the taxicab to the state commissions, and laws in seven states that will increase existing powers to the point where real good can be accomplished.

Regulation by a state commission is the only satisfactory solution to the evils of the unregulated taxicab. Regulation by municipalities lacks uniformity, consistency, stability, and research. The state commissions long versed in the details and specialized knowledge of transportation regulation are the logical repositories of such regulatory powers.

Picked Out of the Daily News

SIXTEEN million passengers were carried on street railways in the United States last year and only fifty of them were injured in street railway accidents.

MORE gas has been sold and used in the United States in the last eleven years than in all previous years combined since it was first introduced in 1812.

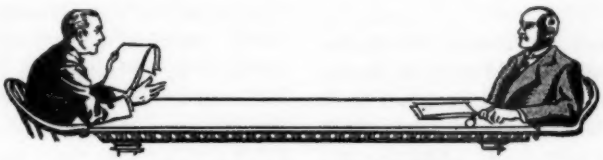
EVERY time an automobile smashes into a trolley pole and breaks it down, it costs $100 to replace. In one city recently in one week speeding automobiles broke nine poles.

THE *"Yankee Clipper"* of the New Haven Railroad now carries in each of its fourteen cars an authentic oil painting by a well-known artist of the clipper ship whose name the car bears. The paintings, worth about $7,000, are chiefly the work of New England artists.

A NEW German telephone device spells out the letters of difficult words and writes them down at the other end. Whenever difficulty is encountered in making a word understood by the listener, the telephone user switches on the new attachment and spells out the word letter by letter; the listener then reads this as it is reproduced in writing in front of him and the conversation proceeds. The device is operated, it is understood, by a series of special signals, one for each letter, which can be sent over the wire automatically at the receiving end, each such signal printing the corresponding letter.

Is a Fixed Rate Base Constitutional?

Why, when the laws of economics work to render a utility rate confiscatory and when the initial valuation no longer squares with the real value of a property, does rate legislation become subject to constitutional attack?



By WILLIAM M. WHERRY

In Public Utilities Fortnightly, for July 10, 1930, Dr. John Bauer has an article entitled "The Fixed Rate Base: Why Is It Unconstitutional?"

After propounding his question, Dr. Bauer makes an assumption which would immediately close all discussion. He says:

> ". . . . let us just assume that the undefined and variable rate base which exists under the present law of the land is not suitable for the purposes of regulation, and that a fixed rate base is essential to make rate making financially sound and effective from the administrative standpoint."

And further asks:

> "While there may be doubt as to what the decision might be in the case of litigation, is it not rather presumptuous to conclude offhand that the Supreme Court would prevent the establishment of a policy which would meet the defects of the present system, and which actually would protect alike both consumers and investors in public utility properties?"

Of course, if a statute were in fact essential to the making of rates and actually protected alike both consumers and investors in public utility properties, there would be nothing unconstitutional in such legislation.

Let us, however, look a little more closely into what is involved in the proposed fixed rate base and the legislation establishing it.

What does Dr. Bauer mean by a fixed rate base?

Apparently the plan is to have an initial valuation, which as made and expressed in dollars on the books will not be subject to change. Additions to the plant would go into the initial rate base at their actual or reasonable cost. Thus, we get a fixed rate base

only to the extent of the initial valuation which can never be changed.

Of course, in rate making the rate base is only one factor. The total rates charged must cover the operating expenses and the net profit. The amount depends upon four factors: (first), the demand; (second), the operating expenses; (third), the rate of return; and (fourth), the rate base.

Every one of these factors is subject to change and varies from time to time through the operation of economic forces.

DR. Bauer apparently recognizes that rates would have to change from time to time. He proposes to fix only one factor out of these four, namely, the rate base. And he proposes to fix that by taking the value expressed in dollars at the present time and treating it as if it never changed.

The cause which has operated on all factors to effect the greatest fluctuation is the change in the purchasing power of the dollar. Before 1914 there was a period when the purchasing power of the dollar fell slowly. Year by year the dollar purchased less. Prices expressed in terms of the dollar were increasing. The war, of course, made a sudden change. The purchasing power of the dollar was cut in two, as if overnight. Since then there has been a gradual increase in the purchasing power of the dollar, greatly accelerated in the last year or two. The fall in commodity prices last year was extreme. No legislative Canute could stem the tide of rising prices in 1915, nor, today, the world-wide flood of falling commodity prices. This fluctuation in the value of the dollar affects the rate base, the rate of return, the operating expenses which have to be paid in dollars of the day, and the demand. The demand is likewise affected by other factors, such as competing service.

NOW, the rate charged by a utility is but a charge for service rendered, and the customer and the company are both entitled to a fair rate. If conditions change the rate must change. If the dollar, in which the rate is expressed, changes, the rate must change with it. The legislature cannot, by any fiat, no matter how solemnly enacted, counteract this economic law. Fixing one factor is no different from fixing the final rate. In the old days, when legislatures fixed rates directly such rates would be constitutional so long as they gave the company a fair return and were not unfair to the customer.

To paraphrase Dr. Bauer's assumption, assume that the legislature fixed a rate base which became unfair to the customer and also unfair to the company. Is there any reason to suppose that the courts would not declare it unconstitutional?

It is only when a statute is not fair, either to the customer or the company, or to both, that a constitutional question arises.

CLEARLY, today, legislation which fixed a rate base at an initial valuation expressed in the purchasing power of today's dollar might be fair. But what about tomorrow, when that purchasing power shall have changed?

What was said of a rate fixed by legislation directly is equally true of the rate base as a factor in making a rate:

"The prediction must square with the facts, or be cast aside as worthless. . . . It must square with them in one year as in another, at the beginning, but equally at the end. In all such legislation, from the hour of its enactment, there thus inheres the seed of an infirmity which the future may develop." Municipal Gas Co. *v.* Public Service Commission (1919) 225 N. Y. 89, 96.

It must not be forgotten that utilities are in private ownership and that one of the rights of property which belongs to the owners, so long as they remain in private ownership, is the right to make reasonable rates. From the point of view of the owner, a legislative rate would be confiscatory if the initial valuation did not square with the real value, bringing the return to a point below what was fair compared with the earnings of other privately owned businesses. At that point the legislation would be subject to constitutional attack. Property cannot be destroyed under the guise of regulation. The mere fact that it was the legislature which sought to impose a different standard and not a public service commission would not save the legislation from constitutional questioning.

Now, how about the question from the point of view of the consumer?

"There is a constitutional upper limit above which the individual rates cannot be raised, which may be determined in a suit by a customer to enjoin the collection of a rate because it is so unreasonably high as to deprive him of property without due process of law."

So says Professor Beutel in a recent article, citing United States Light & Heat Corp. *v.* Niagara Falls Gas & E. L. Co. (1927) 23 F. (2d) 719, and Smyth *v.* Ames (1898) 169 U. S. 466, although there are cases to the contrary.

Thus, there are two danger points, an unreasonably low return and an unreasonably high return, one of which is confiscatory with respect to the company, the other confiscatory with respect to the consumer. If the rate base be frozen at an initial value above what it should be if the current value of the dollar were correctly expressed, a constitutional question could be raised by the consumer.

After all, the plan above proposed by Dr. Bauer is but a modification of the prudent investment theory. That was an attempt to fix the rate base at the number of dollars invested in the plant without regard to their purchasing power.

Under the plan advocated by Dr. Bauer the rate base would be measured by the number of dollars which would have to be invested to build the plant as of today, instead of the number of dollars which actually went into it. But his plan also does not propose to take into consideration any change in the purchasing power of the dollar after the initial valuation is once made.

¶ "The *attempt to fix or freeze one factor in rate making by a statute under the guise of defining a legislative policy, would be unconstitutional as soon as it became unfair, either to the consumer or the company, or both.*"

Like the split-inventory method it ignores facts.

It seems to me that this plan of fixing the rate base is precisely as if the legislature determined to fix the demand by decreeing that it should be measured by the number of customers regardless of the quantity, time, frequency, or character of the service required. To ignore the characteristics of the demand which cause variations in costs would be obviously unfair. The number of customers is meaningless unless the amount of service taken by them is ascertained. In the same way the number of dollars invested in the plant is meaningless unless the purchasing power of the dollar is taken into account. Unfairness to customer and investor cannot be avoided otherwise.

Not only must the company charge a fair and reasonable rate, but it is entitled to do so. Sometimes it is possible to measure a fair and reasonable rate by the cost of competing services or by comparative rates established in markets where the consumer and the company are free to bargain. Usually the best measure of a reasonable rate for a public utility is that test which was laid down by the supreme court of New Brunswick, Canada, namely, what it would cost to reproduce the required service at the time when it is sought to measure its value, including the cost to reproduce the necessary plant. Certainly a consumer should not pay more for a service than he could procure it for if he built and operated his own plant. Likewise, it would be unfair to compel a company to render a service at less than the person who sought to take it would have to pay to replace it.

The rule that requires a fair return on the fair value of the property is merely one test of what is a fair rate. If a rate does not yield a fair return on the fair value of the property it is clearly not fair. The reason why this is a simple test and why value and not investment or cost is protected by the Constitution is found in the analogy of taking property under the power of eminent domain. It is clear that if the title to property were taken, the state would have to pay the owner its fair value at the time of taking, or there would be confiscation.

Now, if instead of taking the title to the property the state takes the use of it and limits the owner to a return which is less than he could get if the title had been taken and the profits invested, we have confiscation in the guise of regulation. It certainly would not be fair to permit the state to insist that you must retain an investment, keep the title of your property, and yet earn nothing on it.

As a mere matter of fairness, it has been generally and universally recognized that a rate must be sufficient, if the service will bear it, to yield at least as much as a person could reasonably earn on an investment of the sum that the state would have to pay him if it took the title. It is also clear that it is not fair to compel the state to pay more in taking the title than the property is worth, simply because it cost more.

Nevertheless, in determining what is fair, cost must be considered. A public utility is obliged to render service. It must be ready to meet the requirements of that service

Utility Rates Must Fluctuate with the Value of the Dollar

"THE rate charged by a utility is but a charge for service rendered, and the customer and the company are both entitled to a fair rate. If conditions change the rate must change. If the dollar, in which the rate is expressed, changes, the rate must change with it. The legislature cannot, by any fiat, no matter how solemnly enacted, counteract this economic law. . . . Clearly, today, legislation which fixed a rate base at an initial valuation expressed in the purchasing power of today's dollar might be fair. But what about tomorrow, when that purchasing power shall have changed?"

at all times. It cannot, except within very wide limits, choose when it will make extensions to its plant. Often those extensions must be ordered, built, and paid for when the markets are high. The service is a continuous one. Although rates must vary and change, they cannot fluctuate hourly or monthly like quotations on a stock market. For this reason, in fixing a fair rate, a reasonable length of time must be taken within which to measure the standard of value. There must also be taken into consideration the expenditures made under duress of service requirements at high prices. It would not be fair to reduce a rate suddenly to a point which would not return anything on the investment, although the service was clearly worth enough to stand a more gradual reduction.

The attempt to fix or freeze one factor in rate making by a statute under the guise of defining a legislative policy, would be unconstitutional as soon as it became unfair, either to the consumer or the company, or both. When Dr. Bauer's initial valuation reached this point the answer to his question is clear. No legislative fiat would save the legislation. The courts would have power to inquire into the facts and as soon as the injustice to either the company or the consumer appeared the legislation would fail.

AT one time it was felt that it was the province of the legislature to determine the facts essential to legislation and that the courts could not inquire into them. As late as fifty years ago, the Supreme Court solemnly stated that the only remedy for a confiscatory rate fixed by a legislature was action at the polls. The next step was to state the doctrine a little differently, namely, that the facts as found by the legislature were presumed to be

correct. Thus stated, an important change appeared, because the statement recognizes that the facts may be different from the determination of the legislature. The next step was to provide a remedy for those cases where the fact was not as determined by the legislature. This step was promptly taken. The court in a great many cases has held that a fact found by the legislature is open to judicial examination and determination. If the facts are then found otherwise, the legislation may be void. Finally, it was held that attempts to prevent judicial determination of the facts are unconstitutional as taking away due process of law.

MERELY because a legislature declares a measure to be a tax does not make it so where it can be proved by proper evidence that the purpose for which the revenue is to be produced is a private purpose, and not a public one. Such a declaration would not prevent the courts from investigating and determining whether the use was in fact public. The declaration of Congress that a transaction constitutes interstate commerce would not be conclusive. The declaration by a legislature that a business is a public utility does not make it such. The fact is open to judicial investigation in the proper way.

In the same way mere legislation fixing a rate base and declaring that it was "essential to make rate making financially sound and effective from the administrative standpoint" would not save such legislation from constitutional objections if the rates made under such plan were, or became, as a matter of fact, unfair and confiscatory to either the company or its consumers.

THE plan proposed has an inherent defect. It assumes that conditions of today will never change and deprives the common stockholder of any possible increase in his return commensurate with the risk which he runs. It also deprives the consumer of possible reductions in rates due to changed price levels. It is clear that it was only proposed because its advocates believed that there never would be a descending price level. As stated by one of its proponents, in testimony before the legislative committee to consider revision of the Public Service Commission Law in New York, as a hearing in 1929:

> "As far as I understand the general economic factors that enter into the price level, I do not see the probability of falling prices."

The prophet was proved wrong within twelve months.

From the very outset the plan would be open to constitutional objection the minute the injustice to the consumer and the investor became so apparent as to be capable of proof.

IN a coming issue of PUBLIC UTILITIES FORTNIGHTLY *will appear a reply by* DR. JOHN BAUER *to the contentions made in this article.*

A Unique Experiment in Rate Regulation

How one power company is solving the problem of reducing its charges to customers by a profit-sharing system that is stimulating the good will of the ratepayers—and paying dividends to stockholders. In a coming issue of PUBLIC UTILITIES FORTNIGHTLY

Remarkable Remarks

MAYOR MCKENZIE
of Denton, Texas.

"The municipal plants are setting a pace in rate making the power interests do not dare to follow."

C. M. RIPLEY
Of the General Electric Co.

"The biggest hydroelectric generators in the world are now being built in Schenectady for Soviet Russia."

CARL D. THOMPSON
Secretary, Public Ownership League of America.

"A very serious emergency has arisen . . . contributions have suddenly and sharply dropped off."

LOUIS STEIN
Director of gas sales, Northern States Power Company.

"The proposition that we are obligated to pay earnings to our shareholders appears to be as undebatable as who won the world series."

A famous labor leader.

"Wherever you see high wages, there you will find power and machinery; and wherever you see no power and machinery, there you will find low wages."

MARTIN J. INSULL
President, Middle West Utilities Company.

"Government is not designed for the purpose of inventing, owning, or operating, but to govern to the end that these functions may be for the greatest number of the governed."

Public Service Commission of Pennsylvania, in decision of 1925.

"The taxicab business is one of the few which have been recognized under regulatory law as offering in some instances advantages to the public through the creation and maintenance of competition."

BRUCE BARTON
Advertising agent.

"If I have any criticism at all of the good will operations of the (utilities) industry, it is that too much stress has been laid on publicity, lectures, the cultivation of school teachers, women's clubs, etc., and too little on direct advertising."

BERNARD J. MULLANEY
President, American Gas Association.

"Socialistic effort is helped along, knowingly or unknowingly, by persons of the sincere but mentally cross-eyed reformer type, by political quacks and rain makers, by the appetite of youth in college and university for the new and radical and by the prevalent journalistic practice of exploiting the unconventional, regardless of its intrinsic importance."

As Seen from the Side-lines

EVERY man has his problems. It may be how to sharpen his pick, build a tunnel under the river, or hold onto the $50,000,000 that he owns.

* *

THE prospect of the tax collector and death may be always with us, said a current philosopher, but the immediate problems of life are no prospect at all. They are ever-present or ever-recurring emergencies.

* *

As the commissioners of public utilities from the four corners of the country, as well as from its intestinal territory, gather for their annual conclave early this month, it might be well to mention that the shifts, slants, crossings, and double-crossings of the modern economic age have visited problems upon them that could never be cut like a Gordian knot.

* *

TRANSPORTATION is the life of America. Electric power is its spark of life. These men have supervisory charge of those utilities and facilities without which a country could become as stagnant as an ancient cheese and the people revert to the psychology of the jungle.

* *

THESE men designate the character of the service which must be supplied to the 120,000,000 of people whose life is influenced by the utilities. A few dollars added to the rates of a small business man may mean to him the difference between profit and loss. A few delays to the shipper and his store derives the reputation for incompetency, a reputation that becomes disastrous to him.

* *

THESE men designate, in effect, the income that may be earned by the millions of investors in the billions of property of the utilities. A rate too low, and their investment becomes as worthless. A rate too high and the consumer on the other end of the stick loses his grip and falls into the gutter of economic distress. Not to mention the effect which the rate may have upon the family home. Mrs. Housekeeper may or may not afford an electric washer and electric lights, according to the rates which these gentlemen designate and the character of the service they prescribe.

* *

IT is all well enough to say to them that rates shall be "just and reasonable" but when you circumscribe with capricious handicaps their methods of determination of them you add to a burden which is already gigantic and possibly inexplicable.

* *

TAKE the limitation of the Supreme Court that was dumped upon them way back in 1898. The court said there must be a reasonable return upon the fair value of the property.

* *

AND from that day to this there have been varying, conflicting, unharmonious ideas of what is a reasonable return.

* *

YESTERDAY, when the speculator had the world by the neck, fair return might have been 10 or 20 per cent. Today, when the world has its heel upon his neck, the prudent, cautious man might agree that the clipping of his 4 per cent coupons was like to the income of an Indian potentate. (India, by the way, was once the richest nation in the world. "He who would capture the wealth of the Indies—" you recall.)

THEN you come to this matter of the "fair value of the property." If you have any misgivings about this, let us lead you into the labyrinthic processes recently described by Interstate Commerce Commissioner Joseph B. Eastman. He said (and when "Eastman says it" people begin to stop and listen):

* *

"WHILE there is no fixed practice as yet, and none which has been authoritatively prescribed by the court, there is a tendency to arrive at 'fair value' by taking an estimated amount for all lands used, based on the current market value of adjoining lands; adding the estimated cost of reproduction of the structural property, at approximately current prices; deducting an estimated allowance for depreciation, varying with taste; adding an estimated allowance for working capital; and adding finally, again according to taste, some figure for that elusive ghost which goes by the name of 'going concern value.'"

* *

IF you could find two men to agree upon their estimates of value under any of those phrases and conditions you would be in the presence of a pair of conspirators.

* *

HAPPILY, in this country there are yet a few public-spirited people who will scream at the top of their lungs whenever their rights are being yanked away from them. Now, these people can usually be heard screeching for and against the public utilities commissions. There is no subject which could give them a finer or wider base for argument and disagreement. And the fact they have not torched the neighboring telegraph poles with effigies of the commissioners must be regarded as somewhat of a tribute to the perspicuity of the gentlemen who comprise these commissions.

* *

HERE and there you will find some commissioner who bows in obeisance when the name of a private corporation is mentioned. It is a king to him that can do no wrong. As an offset, however, there can usually be found some commissioner who gnashes his teeth and spits out chunks of perfectly good gold fillings every time he hears, suspects, or imagines that a corporation may be in to seek a raise in rates. Perhaps they are too far apart to strike any sort of a balance. Yet, perhaps not.

* *

As we have seen them, as a whole, the commissioners are sensible, respectable fellows, of good reputation among their acquaintances, and with a substantial measure of popularity among their friends.

* *

IN our youth we are prone to view every public servant with suspicion. The more we see of them, however, the more we are inclined to the conviction that, by and large, they are good Americans, intending to perform useful public service in the light of their environment, integrity, education, and honor.

* *

MEN are men anyway and in the last analysis, irrevocably and irretrievably. But it is nothing more or less than a damned shame to give them "reasonable rates" and "fair values" and other consequential problems and expect every last one of them to be a Solomon or any other infallible of fiction.

John T Lambert

What Public Service Commissioners Do Beside Fix Rates

A UTILITY rate cannot be "reasonable" unless the service it buys is adequate and financially secure. To attain this object, the commissions devote much effort which is little understood, but which is of fundamental importance. In a coming issue of PUBLIC UTILITIES FORTNIGHTLY will be published an article by COMMISSIONER LEE DENNIS of Montana, that will reveal the work of the commissions in a light that must be considered by everyone who would fairly question the value of regulation.

What Others Think

When and How the College Professor Should and Should Not Be Employed by a Utility

PROFESSOR Seligman's report made to the Committee on Ethics of the American Association of University Professors is a presentation of the ethics which should characterize any relationships between faculty members of colleges and universities and public utilities.

Professor Seligman sets forth certain principles which, one would think, would be already known to any man sufficiently competent to be a university professor or to be a public utilities executive. Unfortunately, both for some of the universities and the public utilities, it would seem that these principles have been violated in the past.

The report makes it clear that there is no reason at all why men who happen to be on the faculties or staffs of colleges or universities and who are well qualified for certain types of research needed by public utilities should not do that research and be paid for it. Such work can be done by these men as individuals or by departments or institutions as such. Mention is made of the study on acoustics financed by the National Electric Light Association.

"It is clear," declares the report, "that gifts for such purposes are not only highly proper but exceedingly desirable. The more interest we can awaken for such interest in our universities on the part of the great business enterprises, the better for all concerned."

Similar studies, closely akin to engineering problems and in the field of technical and technological problems, are approved for the reason that there is a technique in economics as well as in engineering. The report cites as instances of such approved studies questions connected with scientific management like the avoidance of waste, or the integration of production, or the relative economic advantages of the direct or alternating current in electrification.

When any of these interests, however, have translated themselves into political activity and when the issue is drawn between private and public interests, the situation becomes one of "grave difficulty." An illustration of this is cited by Dr. Seligman; the relative merits of loosely organized holding companies as contrasted with highly centralized control.

But for researches involving economic and political problems of controversial importance such as public ownership, equitable taxation, fair wages, suitable hours, and such, neither professors nor universities, the report makes clear, should solicit or receive funds.

It may be true that no academic instructor would permit his findings to be biased by the fact that the money for the research was supplied by the public utilities. The man in the street, however, as Dr. Seligman points out, would suspect such bias, and suspicion of this character, however ill founded, would be as vitiating as though there were actual proof of bias.

Indeed, the author himself appears to share the feeling of the man in the street. "We must remember," he says, "the subtle psychology of the situation. If an individual knows that his investigations are being financed by a particular enterprise, it is only human nature to give it at least the benefit of any doubt. Even if the scholar is quite sure that his conclusions will register his honest beliefs, he will be likely at least to tone down those conclusions in such a way as

to minimize the importance of these facts or those expressions of policy which might be unfavorably received by the donors. At the very best, he will avoid action which may be considered discourteous or untactful. . . . Furthermore, it is perhaps more than a mere coincidence that some institutions which have been receiving large subventions from certain industries should be distinguished for the prevalence among their instructors of highly conservative views on questions of public policy."

This brings us to Dr. Seligman's conclusion that "where the conflict between public and private interests becomes acute, it is not to the advantage of the university to subject its instructors to either the danger or the suspicion of exposure to influences which may cause them, consciously or unconsciously, to swerve from the path of absolute impartiality and of scientific integrity."

If gifts are made for research of this character, the report recommends that they be given in lump sums and not in the form of periodical renewals. Thus a business concern interested in the outcome of the research or of the opinion expressed by the university, department, or professor, could not be in the position of holding a club to control further additions or grants of money.

"The university professor," declares Dr. Seligman, "must be like the judge. His reputation for impartiality must be equally unsullied. . . . The academic instructor must always be mindful of the fact that when he makes any pronouncement in his official capacity, he is involving not only his own university but every institution of learning. . . . He is not justified in accepting a retainer from private persons in any controversial case involving questions of public policy."

The propaganda aspects of the relationship between universities and public utilities are ably treated in this report. It points out that there can be no objection to propaganda when it is labeled, when the source of it is known, when it is honest, frank, and plain. The objection arises where the propaganda is concealed, full of misstatements, where it is difficult to discover its source, and where it leads to conclusions opposed to the truth.

For a professor to accept pay from a corporation for dissemination to his students or to the public, the corporation's point of view on a controversial matter would be comparable to a judge accepting pay from one of the parties to a case under his jurisdiction. The professor may be quite honest in the opinion he expresses but the nature of his position is such that he cannot receive pay for opinions expressed under such circumstances.

Though he does not go outside the field of public utilities in his report, no doubt Dr. Seligman would agree that a university professor has a perfect right to believe in prohibition and publicly to endorse prohibition, but his position becomes questionable if the Anti-Saloon League pays him for his statements. Similarly, a professor has a perfect right to advocate repeal of the Eighteenth Amendment but his position is questionable if antiprohibition associations pay him to disseminte propaganda favoring repeal. And if such payments were kept secret, the professor's position would be even a greater violation of ethics.

—Clyde R. Miller,
Teachers College, Columbia University.

Academic Obligations. A Report on the Public Utility Propaganda. By Edwin R. A. Seligman. Reprinted from the *Bulletin of the American Association of University Professors.* Vol. XVI, No. 5. May, 1930.

The Tax that Breaks the Street Car's Back

Valuation as the basis for rate regulation has become the law of the land—but valuation as a basis for utility taxation is an economic mistake that is threatening the very existence of the street railways. So states Leslie Vickers *in the coming issue of* Public Utilities Fortnightly, *in which he points out what can be and should be done about it.*

Not "Fair Return," But Financial Needs as the Basis of Utility Rates

A DISCUSSION of valuation of railroad property always brings up the question of the bearing of cost of reproduction on the problem.

In a recent book on "Railroad Valuation and Fair Return," by Shao-Tseng Wu, Traveling Fellow in Railway Economics Ministry of Railways, Republic of China, has this to say on the subject:

"'Fair value for rate-making purposes' is not true economic value, but simply a rate base to which a fair rate of return is to be applied in determining fair earnings. True economic or market value is the capitalization of the amount of earnings actually earned or expected. Railroad valuation is not an end in itself; it is merely a working tool for effective regulation of reasonable rates. The process of fixing the value of the railroads is a process of collective bargaining between the railroads and the public—a process of determining the sum on which the public is willing to permit the railroads to earn a fair return.

"A fair value of a railroad property for rate-making purposes is neither the original cost nor the replacement or reproduction cost. It is to be determined by giving equitable consideration to all these and other elements of value recognized by the law of the land. Where so many conflicting equities and divergent conditions exist, compromises and inconsistencies are inevitable. It has been contended that the present policy of the railroads of insisting upon reproduction cost as the dominant element of fair value is a short-sighted policy in view of a possibility of a general decline of price levels, but this cannot be proved by reference to the attitude of the Supreme Court which has never taken and probably will not take the position that either the reproduction cost or the original investment alone must be considered in determining fair value for rate-making purposes. The balance between opposing considerations has not yet been finally determined by the 'law of the land,' but the courts have well stated that fair value is not a matter of formulas. Extreme emphasis upon original cost or current cost of reproduction is inadvisable, because changing price levels may easily reverse the positions of the railroads and the public. Furthermore, there are widely different degrees of importance attached by different railroads to the various factors of fair value, on account of differences in their probable costs of reproduction and in their earning capacities under particular rates prescribed by statute. Certain aspects of the problem, however, should be emphasized. A prompt and a somewhat definite settlement of the valuation controversy is preferable to years of tedious and expensive litigation. To this end, there are numerous suggestions, some of which may be briefly stated."

VALUATION of railroads has cost the country many millions of dollars, and here and there someone arises to question the value of the whole procedure. Says the author:

"It has been advocated by the National Industrial Traffic League that the attempt at railroad valuation be discontinued. Instead of making rates to yield a fair return upon the value of the property, the financial needs of the railroads should be made the direct criterion of the reasonableness of rates. The adjudication of railroad financial or credit needs may be as difficult as the problem of valuation, but it is quite within the realm of possibility to take a return for a certain past year, or years, as a standard and then add to that return increments necessary to constitute a fair income upon added capital investment. Whether such a policy of return regulation can be adopted in this country at this late date is extremely problematical.

"On the other hand, to many it has seemed that the valuation principles of the commission are the best that can be practically adopted. There has been genuine regret that the Supreme Court did not give its approval. Conceivably, legislation might be enacted to sustain the commission by declaring that valuation in the future shall consist of actual investment under the commission's accounting control. But, in view of the past pronouncements of the courts, it is doubtful whether they would validate such a law, if enacted."

DISCUSSING the controversial question of the reasonableness or adequacy of the return, the author comes to the following conclusion:

"The basic test of the adequacy of the rate of return is the proper maintenance of the credit of the railroads so as to enable them adequately to perform the services required by the public. If the main purpose of rate regulation is to accomplish what competition does in the fields of unregulated enterprises, the basis and rate of return must, in the long run, be so adjusted that

the amount of earnings offered will be high enough—though no higher—to attract the capital and business ability to the railroad industry in adequate amounts in fair rivalry with the unregulated fields of employments. In the absence of a definite guarantee of earnings, either the basis or the rate of return or both must be made changeable according to changing conditions.

"Many believe that a fixed rate base with a variable rate of return is preferable to a fluctuating rate base and a stable rate of return. They insist that only permanent and tangible elements be recognized in the rate base and those elements that are temporary or intangible can be best taken care of through the rate of return. While much can be said in favor of the contention, it is largely a question of expediency whether to change the basis or the rate of return under certain conditions. If an increase of railroad earnings is deemed necessary solely or mainly for the purpose of attracting new investment, the logical and more effective way would be to increase the rate of return rather than to expand the rate base. For, if the increase is given through a higher rate base without any change in the rate of return, the inducement to new investors would apparently remain the same; but, if it is given in the form of a higher rate of return, the inducement would be more direct and effective. If, on the other hand, an increase in earnings is desired primarily to compensate for the capital already invested, an equitable expansion of the rate base may be more appropriate than an increase in the rate of return, although to increase either would produce the same result. That there is such an apparent difference is amply proved by the fact that the courts have been more liberal in fixing the rate base than the commissions, while the more forward-looking commissions have, for the most part, allowed a higher rate of return.

"Moreover, whether revision of the rate of return or revision of the valuation basis is needed will also depend on the question whether the main need is to adjust the rate of return to the prevailing rate of interest on capital or to equate the valuation basis with other property values. As experience has shown, property value and interest rate do not always move hand in hand. Property value may be high during a period when interest rates are low and vice versa.

"In the midst of a dynamic society and in the presence of the various forms of competition which railroads encounter today, rate regulation is not a rigid and static process. The duty of a rate-making body is to establish a reasonable schedule of rates and keep it fairly stationary, but the commission must be ready to make adjustments when changes occur in railroad earnings, railroad expenses—costs of materials, wages, and taxes—and railroad credit needs. It cannot fix a valuation basis and a certain rate of return once for all. To say this is not to suggest that any slight or temporary variation in price levels or interest rates should demand corresponding adjustments. That is neither practicable nor desirable. But a periodical revision of either the basis or the rate of return or both may at times afford greater protection both to the railroads and to the public."

DR. MILO R. MALTBIE, chairman of the New York Public Service Commission, has recently stated that if prices continue to fall and rapid progress in the utility field continues to be made, certain questions will solve themselves; and that it is conceivable that the relative positions occupied by counsels for utilities and public bodies on this reproduction cost question may soon be reversed.

Originally the positions of the ratepayers and the railroads, whose rates were at that time under attack, were reversed; but their arguments were based on conditions at that time existing. It is difficult to see how either side could now in good grace change the position it has taken after so many years of controversy. The utility companies could not well assert that the rule of law laid down by the Supreme Court which they have maintained is sound should not be adhered to; and the ratepayers could not well insist upon the application of a rule which they have asserted interferes with the state regulation of utilities.

However, the consistent application of the Supreme Court rule with reference to the rate base cannot be deemed unfair. If a utility company is to be held to a return on the value basis in a period of low values, it would be manifestly unjust to limit it to original cost during a period of high values. Likewise, if investors put their money into the enterprise with the understanding that they are to reap the benefit of increasing values, they have no ground for complaint if the return is limited to present value at times when values fall below original cost.

The statement that the basic test of

the adequacy of the rate of return as the proper maintenance of credit is undoubtedly sound. In the long run, the reasonableness of the return is determined by the man who has the capital to invest; and from his decision there is no appeal. Governmental bodies may regulate utilities, but they cannot commandeer capital.

—R. L.

RAILROAD VALUATION AND FAIR RETURN. By Shao-Tseng Wu, Ph. D. Philadelphia: University of Pennsylvania Press. 233 pages. $3.00.

A Standard for Establishing a "Reasonable Rate"; the Crying Need of the Regulatory Commissions

DR. JOHN BAUER, a frequent contributor to PUBLIC UTILITIES FORTNIGHTLY, is one of the leading critics of governmental regulation of public utilities as at present practiced. He is hostile not to the theory of regulation but only to the present method of its administration. He believes that there should be a fixed rate base not subject to fluctuation. He is of the opinion that the "value" rate base has disappointed the hopes of the public in the effectiveness of rate regulation. In a recent address he said:

"A great deal was expected from public utility regulation as it was introduced about twenty-five years ago under the special commission system. But students of public affairs and the public at large have come to realize that the early expectations have been largely frustrated and that regulation has not produced the public protection that had been expected. Active movements are now on the way to reëxamine the methods of regulation, and to determine in what respects revision is necessary to make regulation effective from the public standpoint. Such surveys have been made in New York, Massachusetts, Wisconsin, and dissatisfaction with the existing system has spread into practically every state.

"I have given a great deal of study to this particular aspect of regulation of business, and made a comprehensive report on the matter to the so-called revision commission, and I feel clear that the difficulty has been the lack of a definite and exact basis of rate making that can be effectively administered. Rate regulation has largely broken down for lack of adequate standards of administration. The commissions are expected to fix reasonable rates, but they have not been provided with suitable measure or yardstick of reasonable rates, or with adequate administrative machinery for rate making. The statutes have not stated how or upon what basis reasonable rates are to be fixed. Because of this lack of definiteness and exactness in rate making, there has been a conflict of interest in every adjustment of rates. The commissions have been involved in litigation, and their work has been rendered largely futile through the cumbersome and expensive procedures under which they have operated.

"I shall not go into the technical and legal questions with which the commissions have struggled. I shall merely state that in the absence of definite standards of rate making fixed definitely by legislation, the commissions were inevitably thrown back upon the courts for the determination of standards. Rate making itself, of course, is a legislative process, but where the policy and procedure are indefinite and undetermined, the final determination of reasonableness must, perforce, go to the courts. Under these circumstances, the unavoidable conflict between undefined and undetermined private and public interest in rate control, has produced from the Supreme Court of the United States the general declaration that rates must be so fixed as to furnish a fair return on the 'fair value' of the properties used in service, and that in the determination of such 'fair value,' consideration must be given to the actual cost of the properties, the reproduction cost, and to any other factors that may be relevant in a particular case.

"THIS decision was made many years ago, in 1898,—in the famous case of Smyth *v.* Ames. The commissions, operating under the vague statutes, came under the force of this general declaration. During the earlier years of regulation, and up to the time of the war, they encountered no particular difficulty with the standards as laid down by the Supreme Court. They proceeded to establish, without explicit statutory authority, a general cost system of rate making, with the general idea that reasonable rates are to be

measured by the cost of service, including in cost the return required upon capital investment. Whenever they found the amount of capital investment to be uncertain, they made an appraisal of the property, to supply a reasonable substitute figure. Their general objective, though unexpressed in statute, was to place rate making under systematic accounting control.

"This development of policy promised to be effective, but it was outside of the explicit provisions of statute. Except for the war, it would probably have become generally established throughout the country, and would have become accepted as a part of the law of the land. But before it became thus settled through universal practice, the war came upon us with its upheavals of price level and construction costs. Then came the companies' insistent demand to base 'fair value' of the properties upon reproduction cost, to take into account the new level of prices, rather than upon actual cost, as had been adopted by the commissions.

"HERE was a sharp conflict of interest which was brought for determination to the Supreme Court of the United States. In the absence of definite legislative standards and machinery fixed when the regulatory statutes were enacted, the Supreme Court could hardly do otherwise than to declare that the 'fair value' must be established as of the time when the rates were under consideration, and must, therefore, make allowance for the shift in price level and the reproduction cost. This decision has, of course, been accepted by the commissions. But they are now floundering with the administrative impossibility of fixing rates upon such an indefinite, variable, and indeterminate basis. Unless through direct legislation a definite and exact cost basis of rate making is established, with suitable provisions to meet the requirement of the court decisions, the purpose of rate regulation will be largely defeated, because of the lack of appropriate standards. No commission can perform its job of rate control over hundreds of companies, un'ess it has an effective administrative system. Such a system can be attained, but it will be opposed by powerful special interests. Its establishment, I believe, is by far the most important public task before our state governments.

"To a greater or less extent, the social effectiveness of regulation in every line has suffered for the lack of precision as to policies and exactness as to machinery of control. The mere enactment of regulatory statutes is of dubious worth, even if the general objective is desirable, unless adequate administrative provisions are made for the attainment of the public purpose. It is in this respect that our regulatory statutes have been largely defective, the laws themselves have often created conflict of interest between social groups, and have thus compounded their difficulties because of concentrated attack upon the statutes."

Dr. Bauer believes that a direct and exact basis of rate making can be established by legislation and that such action would be upheld by the Supreme Court.

How Far Should the Authority of a Regulatory Commission Extend Into the Financial Management?

THE courts have several times stated that public service or regulatory commissions are not the managers of utility property. They, however, have certain jurisdiction over the activities of such companies. How far their powers extend over matters, which in private industries are the functions of the owners, is always a troublesome question. Thomas F. Woodlock, formerly a member of the Interstate Commerce Commission, believes this is an especially important consideration when it comes to the question of financing. In an article in his "Impressions" as a commissioner he says:

"The one department of regulation wherein the zone of management requires the most careful delimitation is that which deals with carrier finances. The law places in the hands of the regulating authority complete control—

(1) Of amount and character of securities to be issued and;

(2) The prices and terms of their sale or pledge.

"Here we touch the very vitals of carrier management. What is the interest of 'the public' in this matter? The public is fundamentally interested in carrier solven-

cy, for insolvency means receivership and —almost necessarily—deterioration in service. The public, therefore, is interested in the carrier obtaining its money on the best possible terms. Therefore, it is interested in 'sound financing' by the carriers. What is and what is not 'sound financing' is not at all times easy to discern or describe. Certain *minima* can no doubt be laid down by way of principle. Fixed interest charges, for example, should be within a 'safe' limit. A carrier should so finance as to be able to raise what money it may require from time to time without increasing those charges beyond that limit. That precludes insolvency and assures necessary enlargements of plant. In general the regulating authority is bound to see that these essentials are present—if possible—in capitalization proposals presented for its approval.

"But with these essentials safeguarded, managerial discretion must have a free field in its choice of means to attract capital from the investment market. Neither shipper nor traveler—as such— is necessarily concerned in those means, and the concern of the regulating authority under the law is limited to the interest of the shipper and traveler—as such—and their need for an adequate railroad system. The investment market is in constant flux and is characterized by extreme variety in the kinds of securities in which participation, either as owner or creditor, in corporate enterprises is offered to the investor. Whole libraries have been written on the subject of corporate finance and the problems of investment, and beautifully symmetrical theories have been laid down for the guidance of all concerned. But one obstinate fact remains at all times in the foreground, and that is that when the investment market is asked for capital its terms must be met, for from those terms there is no appeal. And, subject to the essential requirements above described, it is the business of management and not the business of regulation to devise the means to meet them. And, in meeting them, management is entitled to follow its own judgment—and to make its own mistakes."

—D. L.

IMPRESSIONS OF AN EX-COMMERCE COMMISSIONER. By Thomas F. Woodlock. *Barron's.* September 29, 1930.

Other Articles Worth Reading

IMPRESSIONS OF AN EX-COMMERCE COMMISSIONER. By Thomas F. Woodlock. *Barron's;* pages 10–11. September 29, 1930.

PUBLIC OWNERSHIP OF POWER. By Louis Waldman. *Current History;* October, 1930.

PUBLIC SERVICE AND THE PUBLIC. By Felix Frankfurter. *The Yale Review;* October, 1930.

RATE MAKING. By Milo R. Maltbie. *The Gas Age-Record;* pages 519–522. October 4, 1930.

SALES ALLIES. By Floyd W. Parsons. *The Gas Age-Record;* pages 523–525. October 4, 1930.

THE MORE WHO TELL THE MORE WHO SELL. By Stanley Jenks. *The Gas Age-Record;* pages 500–502 and 522. October 4, 1930.

THEY SELL APPLIANCES NOW—WHAT NEXT? By Llew S. Soule. *Gas Age-Record;* pages 306–307. August 30, 1930.

TRENDS IN OWNERSHIP AND REGULATION OF PUBLIC UTILITIES. By John Bauer. *The American City;* pages 135, 136. September, 1930.

UTILITY VALUATION DEMANDS LOGICAL TREATMENT. By John W. Burke. *Electric Railway Journal;* pages 567–571. September, 1930.

VALUATION AND RECAPTURE. *The Traffic World;* page 594. September 6, 1930.

An editorial dealing with the question of ascertaining value of railroad properties, with special reference to the case of the Jonesboro Lake City & Eastern Railroad Company.

WHY ADD TO THE FEDERAL POWER? By Robert S. Smith. *The Nation's Business;* pages 25–27 and 206–207. October, 1930.

An interview with Senator James Couzens regarding his proposed bills for the Federal regulation of interstate transmission of electric power, and all telegraph, telephone, cable, and radio companies carrying on interstate or foreign commerce.

Publications Received

N. E. L. A. RATE BOOK 1930. New York; National Electric Light Association. 590 pages. Price: $10.00 to members; $25.00 to nonmembers.

RELATION OF DEPRECIATION OR RETIREMENT RESERVE TO VALUE. By Lovick P. Miles. Chicago, Ill.: American Bar Association. August 18, 1930. 32 pages.

The March of Events

Alabama

Low Electric Rates in State

TESTIMONY has been introduced before the commission to show that rates of the Alabama Power Company are much lower than the average rates applied throughout the nation, says the Montgomery *Advertiser*. This was submitted on an application of the Alabama Power Company for approval of the purchase of all properties of the Georgia Power Company in the state of Alabama.

A witness stated that the average amount paid by customers of the Alabama Power Company for residential use of electricity was 5.105 cents per kilowatt hour a month, according to a recent survey, while the average for the nation for the year ending May, 1930 was 6.07 cents per kilowatt hour. The fact was brought out that the average residential consumer of the Georgia Power Company paid 5.77 cents a kilowatt hour a month. The *Advertiser* adds:

"In the matter of all classes of rates, again it was shown that the Alabama Power Company schedule was lower than the nation's average. The average amount as received from all classes of consumers was 1.105 cents per kilowatt hour a month, while the average for the nation is 2.59 cents per kilowatt hour a month and for the state of Georgia was 1.97 cents per kilowatt hour."

It was said that if the commission would approve the transfer of the properties, twelve industries in Alabama would effect an annual saving of $60,000 based upon the amount of current consumed by them for the year ending in April, 1930. Four industries would receive a slight increase in rates while eight would receive a reduction under the amount they are now paying. This would be because of the difference in the rate schedules of the two companies.

Water by Rail

IN some oriental countries we understand that water carriers sell water from buckets, but we have been so accustomed to receiving unlimited water supplies from faucets which connect directly through pipes with a water source that it is really news when we hear of water being carried on freight cars. This, however, is the report from Hartselle, Alabama.

An emergency drought relief rate proposed by the Louisville & Nashville Railroad for transportation of water in tank cars has been approved by the Alabama Commission. This was because, according to the Montgomery *Advertiser*, the water supply, which was furnished by six wells, had been gradually diminishing. Water for several days had been limited by city authorities to drinking and bathing purposes, and residents were requested to refrain from using it for their lawns and washing automobiles.

Arrangements were made to obtain an additional supply of water from Decatur, which is about fifteen miles from Hartselle. The rate approved provided a charge of $11.50 per tank car, and was about one fourth to one fifth of the regular rate.

California

Los Angeles Car Service Attacked in Council

COUNCILMAN J. G. McAllister, of Los Angeles, has charged that the Los Angeles Railway has not made the improvements which were forecast at the time it obtained an increase in fares from 5 to 7 cents, says the Los Angeles *Examiner*. He urged that City Attorney Erwin P. Werner take steps before the commission and, if necessary, in the court to "demand the resumption of adequate schedules on the lines of the Los Angeles Railway and the providing of line extensions and new equipment."

The councilman said that the company had increased its revenue from passenger carrying in 1928 by $342,176.17 over 1927, and in 1929 by $1,589,612.98 over 1927. Wages of employees had been increased but it was alleged the personnel had been reduced.

District of Columbia

Street Railway Valuation Gets under Way

PRELIMINARY work on the valuation of the local street car companies has been in progress for several weeks. The commission on October 18th announced the appointment of Ira L. Reynolds, formerly on the engineering staff of the Illinois commission, as an appraisal engineer to do cost, appraisal, and inventory work on the valuation. The Washington *Star* informs us:

"The first thing done was to get out inventories of the companies' property made in the first valuation case from 1913 to 1919, and to attempt to segregate such parts of it as may still be usable. Since that inventory was taken some of the items of property such as rolling stock and trackage have remained practically unchanged, and the old inventory can be checked in the field more easily than making a new one.

"Maps are being prepared showing the location of the various properties of the two companies to be used in the later field survey. The commission's engineers and accountants are trying to work out a uniform system of inventory units. During the first inventory the two companies and the commission often had divergent views as to whether parts of the underground construction should be classed with trackage or power transmission units, with resultant difficulty in interpreting the results arrived at through different inventories.

"The same work is being done by the two companies. The Capital Traction Company has hired an outside engineer to direct its valuation work, which will be done by its own staff, but he has not yet reported for duty. The Washington Railway & Electric Company has not made any outside appointment."

The work of valuation, it is expected, will take more than a year although, according to Commissioner Harleigh H. Hartman, that time may be cut by hiring additional engineers.

Motor Bus Terminal

THE need of a motor bus terminal to relieve traffic congestion and parking on streets during lay-over periods is well recognized in the capital city, but, according to the Washington *Star*, the establishment of a union bus terminal has been temporarily sidetracked. This paper says:

"The campaign for establishment of a union bus terminal was started by the former Public Utilities Commission under Chairman John W. Childress and reached a point where the bus operators were actually looking around for a suitable location somewhere in the vicinity of the business district. But there the movement ended, chiefly because the bus operators were not willing to undertake any coöperative scheme of financing the project.

"In the last few months, however, there had been recurring rumors that one of the country's large railroads which is operating an interstate line into Washington had planned to build a bus terminal for its own vehicles and lease space to operators of other lines. Recent reports indicate that this project apparently has been abandoned, and the commission now finds itself in the same position with respect to bus terminal facilities as it was more than a year ago. And with the street railway valuation engrossing its attention, there is little likelihood that the commission will find time to stimulate interest in another movement for establishment of a union terminal.

"The new commission under Major General Mason M. Patrick is known to be just as strongly in favor of a bus terminal as was the former commission headed by Mr. Childress. And like the old commission, it has no authority to require the erection of a terminal, and unless it can by persuasion get the bus operators to finance the project the present sidewalk terminals probably will continue to exist.

"The old commission had an idea it could force the busses into a union terminal, if one existed, even against their wishes. The plan under consideration was to have private capital finance a terminal building, which the commission would compel the busses to use, through an order directing them over a route which would lead directly to the building. The commission has the power to control routes used by motor busses.

"There is some doubt among public utility experts as well as the bus operators themselves that the commission could legally enforce such an order, even if private capital should come forward at this time and offer to build a terminal.

"Some of the bus operators, it was learned, never did look favorably upon the plan of using a terminal financed and under the control of a railroad operating an interstate line into Washington. The principal objection to such a terminal, it was said, is that the railroad operating it could control the sale of tickets, and route passengers over its own lines instead of competing lines, which might be using its terminal facilities."

Georgia

Gas Service Charge Opposed by Customers

THE commission on October 16th began consideration of gas rates in Athens, Macon, Griffin, and Rome following a rule *nisi* from the commission to the companies to show cause why rates should not be revised.

Opposition developed to the petition of the Athens Gas Company for authority to collect a service charge of $1.25. Leading Athens citizens, says the Atlanta *Georgian*, demanded a reduction of rates on a straight meter rate basis. Charles A. Reed, rate expert for the company, contended that fairer rates could be established by reducing the present consumption charges and instituting a service charge.

He testified that a straight meter rate is a limited injustice because the greatest cost of gas to the company is in distribution. He explained service cost to the small consumer is just as great as to the large consumer. With the service charge, he said, the small consumer will pay less for his fuel since he will be encouraged to use more gas and will thus use enough gas at the low rate above the service charge to compensate for the service charge itself.

Illinois

Coin Box Phone Case before Supreme Court

ARGUMENTS were heard by the United States Supreme Court on October 20th in the 7-year fight to obtain a reduction in rates for certain classes of coin box telephone service in Chicago. The appeal is from a decision of a lower Federal court favorable to the Illinois Bell Telephone Company.

A temporary injunction had been made permanent restraining the Illinois Commerce Commission from enforcing a rate reduction on coin box service. The company since 1923 has been collecting a higher rate than ordered by the commission. If the city is successful in upsetting this injunction and sustaining the commission order, a fund of more than $12,000,000, exclusive of interest, will be returned to telephone users.

The city contends that the Federal court erred on four grounds in holding the reduction ordered by the commission confiscatory and invalid. These grounds as reported in the Chicago *Tribune* are:

1. The net income which the Federal court estimated the company would receive under the commission's 1923 reduction order is more than the books of the company showed it receives under the higher rates.

2. That the company was giving free of charge to the A. T. & T. the use of its local exchange property having a book value in 1923 of $57,000,000, and expense items of $18,000,000 for the benefit of the long distance service of the parent company was not taken into account by the Federal court.

3. It is impossible to compare the minimum net earnings which the company requires to attract capital and to maintain its securities as against companies outside the Bell system because the company, as a part of the Bell system, occupies a unique position in relation to the public and investors.

4. The rate of return which the Federal court held was insufficient was based upon a value which was excessive by $25,000,000.

Indiana

Thermic Basis of Gas Rates

THE public service commission has been asked by the Northern Indiana Public Service Company to introduce a new form of gas charges. It is proposed to change the basis of billing from cubic foot measurement to the quantity of heat units consumed. Such a method has already been approved in Illinois, and heat quantity has been a factor in rate making elsewhere.

Charges would be made according to the number of "therms" consumed a month instead of the number of cubic feet of gas used. A therm is 100,000 B.T.U. of gas.

Morse DellPlain, president of the utility, in explaining the new method for gas rates, says the Indianapolis *News*, has announced that it contemplates no change in the cost of gas service to the customer. Customers who prefer to pay their bills by the old method will be permitted to do so with the cost of

the higher quality gas being charged to them. The plan, the company explained, will permit the use of higher heating quality refinery gas and natural gas on a basis of proper charges for a better quality of service than was possible under other plans.

Kansas

Large Utility Organization Is Announced

ANNOUNCEMENT has been made by Nathan L. Jones, president of the Public Utility Investment Company of Salina, that Diversified Utility Investment, Incorporated, has been formed as a public utility and quasi-public utility operating company with capitalization of $1,400,000. The Wichita *Eagle*, describing this new organization, says:

"Functioning as an investment banking house and an operating company since its organization in 1924 by Mr. Jones and his associates, the Public Utility Investment Company, under the plan now going into effect, becomes an exclusive investment banking institution of national scope, with branch offices in principal cities of the Middle West. The new company will function in the capacity of development of new operating companies, acquisition and activities formerly supervised by the parent company.

"As its name indicates the new company will operate and develop public utilities and quasi-public utilities, applying the same principles that have made utility operations an outstanding success during the last decade.

"Among the operations included in the new organization will be the development of 'Follow-the-Swallow Tourist Camps, Incorporated,' a system of de luxe camps, founded by Salina men, which will become the 'Harvey house of the highway.' Camps will be established over the entire United States as an interlocking system to make automobile travel more luxurious. Six ice cream factories and creameries located at Newton, Pratt, Liberal, Junction City, Salina, and Dalhart, Texas, and operated by the Western Pure Milk Products Company are also a part of this new organization. Immediate construction of a most modern ice cream plant at Dallas, Texas, with a capacity of 200,000 gallons annually, is also announced."

Louisiana

Service to Lake Pontchartrain

WHETHER the Louisiana Public Service Commission will approve the abandonment of the venerable Pontchartrain railroad, 4.4 miles long, was one of the questions on the schedule before Chairman Francis Williams on October 14th, according to the Baton Rouge *State Times*, which adds:

"Chairman Williams has indicated that he is not disposed to approve this application for abandonment unless provision is made to take care of the transportation needs of the people still residing along the shore of Lake Pontchartrain in and around Milneburg. The public service commission is anxious that the people of Milneburg attend the hearing and express themselves with regard to the application.

"At the same time Chairman Williams is desirous of assisting and coöperating to the fullest extent with the city authorities and the citizens living along Elysian Fields avenue in New Orleans in their efforts to extend and pave Elysian Fields avenue to Lake Pontchartrain at the earliest possible date."

Maryland

Rates on Bay Ferries

A REDUCTION in rates of the Claiborne-Annapolis Ferry Company was proposed before the commission on October 9th by John Henry Lewin, people's counsel. His petition asked for an early opportunity to present testimony to show that the rates and

the return on the value of the property are excessive.

The Baltimore *Sun* states that the petition did not mention a $20,000 annual subsidy paid to the ferry company by the state for the operation of its Claiborne-Annapolis line. This amount was authorized by the legislature to be paid annually to the company.

Massachusetts

Lower Rates Demanded under Dial System

THE Boston Central Labor Union has filed a petition with the commission requesting an order directing the New England Telephone & Telegraph Company and the American Telephone & Telegraph Company to reduce rates in proportion with the savings which have resulted from the use of the dial system. It is charged that the company contributed to unemployment and business depression through the postponement, if not cancellation, of some $5,000,000 worth of plant and building work for which the company appropriated the money and let the construction contract.

The labor union asserts that telephone subscribers are called upon by the company to become "nonpaid telephone operators" and to pay to the telephone company the same, or a higher, rate for telephone service than they paid when the telephone company furnished paid telephone operators to assist and to serve the public.

New Jersey

Five-Cent Fare Returns

PRESIDENT Thomas N. McCarter, of the Public Service Co-ordinated Transport, has accepted the suggestion of Chairman Joseph F. Autenrieth of the Board of Public Utility Commissioners that the present time of unsettled business conditions is a bad one in which to carry on rate proceedings, and that a 5-cent fare would be an inducement to riding and probably increase the company's return. The result is that the traction company will drop its pending application for an increased token fare and will return to the flat 5-cent fare on busses and trolleys.

The fare question has been before the commission for several months. Since January 1st the company has been operating on a 5-cent token and 10-cent cash fare schedule which was allowed experimentally by the commission. The company in June applied for authority to increase the token fare to 6½ cents, or four tokens for 25 cents.

Gross revenues have dropped off during the first nine months of 1930 compared with the same period in 1929 when the 5-cent fare was in effect. Mr. McCarter is quoted in the New York *Times* as saying that in carrying out the new arrangement for a 5-cent fare the company thinks Public Service is making a substantial contribution to help existing conditions locally. The utility by adopting the lower fare waived its legal right to insist upon higher rates.

New York

Says Small Consumer Must Pay His Way

MATTHEW S. Sloan, president of the affiliated utilities which are seeking to establish new rate schedules involving a $5,396,000 cut in revenues in New York city, has testified that only by establishing a service charge can the utilities offer a reduction in the energy rates from 7 to 5 cents per kilowatt hour. The small consumer, he said, must pay his way instead of being carried by other consumers.

Mr. Sloan expressed the hope of the companies of entering such buildings as the Equitable Building, which manufactures its own power and light, because power can be

sold to them more cheaply than these buildings can produce it under the new schedules of rates.

Although Mr. Sloan has stated that the companies did not have any intention to war on the submetering companies in the rate proceeding, Judge C. J. Shearn, representing the real estate board of New York, is quoted as saying that he intends to show that the companies' revenue will be increased by more than $6,000,000 a year because many consumers who are now customers of submetering companies will come on to the companies' lines. The New York *Times* states:

"Mr. Shearn estimated that the proposed rates would cut out about half of the submetering business, mainly in large apartment houses and the smaller office buildings, although the large buildings using very large quantities of electricity would not be affected. He said the result of this curtailment in the submetering business possibly would be reflected in higher rents, since builders had sold bonds to the public on the strength of their incomes from the resale of current to tenants."

Ohio

Wholesale Gas Price Involved in Rate Fight

THE cost of gas wholesale to the Columbus Gas & Fuel Company is one of the points at issue in the proceedings before the commission to secure an increase in rates. The company has been appealing for a rate in Columbus of more than the 48 cents per thousand cubic feet now charged. It is contended that the utility pays 45 cents per thousand cubic feet for gas delivered at the city's gate for distribution.

Testimony on this point was admitted by the commission although James M. Butler, counsel for the city of Columbus, objected. He argued that the 45-cent wholesale rate specified in a contract between the Columbus Gas & Fuel Company and the Ohio Fuel Gas Company, which pipes the gas to Columbus from West Virginia and Ohio fields, should not be considered since the two companies are affiliated. Chairman Frank Geiger of the commission is quoted in the Columbus *State Journal* as follows:

"The commission is desirous of having before it all proper testimony that will aid it in determining the question at issue. There is a tender made here to show prices that are paid for natural gas by other distributing companies.

"That might tend to show the proper price for gas; it does not necessarily show it; it does not determine yet whether or not that is the price in the open market or whether it is the price between inter-related companies and companies related to the present company.

"Of course, there has always been in recent years this process of reasoning or process of development, not only in gas companies but other companies, that an associated group will put up the price in one place and then offer that as evidence as to what the price should be in another place.

"That is all competent, but the weight of it is another matter."

Oregon

Power to Order Cross-State Railroad Line

THE question whether the Oregon-Washington Railroad & Navigation Company can be compelled to build a cross-state extension 185 miles long in Oregon, has been presented to a court of three Federal judges. Hearings have been completed.

The Interstate Commerce Commission had directed an extension, but this order was attacked in the court, with the Union Pacific, the Great Northern, the Southern Pacific, and the Oregon and Idaho Public Service Commissions presenting their views.

An outstanding feature of the case which is of interest to railroad circles and commissions is the question whether the Interstate Commerce Commission, under the Transportation Act of 1920, can direct the extension of lines by a reluctant rail carrier. This is said to be the first instance in which the Federal Commission has undertaken to direct a railroad to perform involuntary major construction.

As stated by counsel for the Interstate Commerce Commission, there are three main issues: Whether the Interstate Commerce Act confers authority to force extensions on the railroad by order of the commission; whether, if the act contains the power, it is contrary to the Constitution; and whether the order was supported by substantial evidence as to the necessity and convenience of the extension.

The Latest Utility Rulings

CALIFORNIA COMMISSION: *Re Modern Warehouses, Inc.* (*Decision No. 22828, App. No. 16780.*) In granting authority to a warehouse corporation to transfer properties, the commission held that it had no jurisdiction over the dimunition of the utility's outstanding stock, or over the distribution of stock which a utility will receive in payment for its properties upon transfer.

FLORIDA SUPREME COURT: *Florida Motor Lines, Inc. v. Railroad Commissioners.* (*129 So. 876.*) An order of the commission giving a motor carrier authority to install service over the objection of another existing carrier was set aside as injurious to the legal rights of the latter. The court held that an order of the commission, being an exercise of quasi-judicial powers, was reviewable on a writ of certiorari where no other method of review was provided by law. Delegation by the legislature of these quasi-judicial powers to the commission was held to be constitutionally proper.

INDIANA COMMISSION: *Re Miami-Wabash County Telephone Co. Inc.* (*No. 10078.*) In granting authority to the telephone company to issue securities, the commission refused to use estimated costs to reproduce the properties as a base for estimating the amount of such securities, and also declined to permit bond discounts.

INDIANA COMMISSION: *Re Laws Gas Co.* (*No. 10132.*) The operator of a small gas company was not permitted to establish a monthly minimum charge for domestic service, until it was shown that the character of the service, previously shown to be inadequate, had improved to the extent necessary to justify the minimum charge, and the director of service of the commission was accordingly instructed to make an investigation and report concerning the quality of the service within thirty days of the date of the order.

INDIANA COMMISSION: *Re Municipal Electric Co.* (*No. 10214.*) A petition of a municipal electric plant for an increase in the minimum charge to the amount of $2 per month for all customers residing outside of the city limits was approved, where it was shown that the cost of service to such rural patrons could not be met at a less minimum, and where such customers paid no tax for the buildings and upkeep of the city streets, city lighting, and buildings.

INDIANA COMMISSION: *Re Rates, Rules & Regulations for the Transportation of Iron and Steel.* (*No. 10120.*) In denying proposed increased freight rates on iron and steel, which were not justified by any other evidence except certain findings of the Interstate Commerce Commission, the Indiana commission pointed out that it was its duty and function to ascertain, if possible, the justice and reasonableness of all rates proposed, and that it could not delegate to another the authority thus conferred upon it by statute.

INDIANA COMMISSION: *Re United Corp.* (*No. 10064.*) A telephone company was authorized to increase rates at its Rossville and Moran exchanges so as to yield an approximate return of 7 per cent on its rate base which was fixed by the commission at $55,-124.99.

INDIANA COMMISSION: *Vincennes v. Vincennes Water Supply Co.* (*No. 10191.*) Complaint by the city of Vincennes against the service and rates of a water company was sustained by an interlocutory order approved September 26, 1930. The commission found the water supply to contain objectionable tastes and odors and ordered the company to remove these defects within five months. A revaluation of the property was also ordered and immediate action on the rate complaint was deferred pending the result of such revaluation.

LOUISIANA COMMISSION: *Motor Freight Lines, Inc. v. Interstate Motor Express Co. Inc.* (*No. 1403, Order No. 744.*) The defendant corporation acting in the capacity of a freight forwarder, under contract with owners or drivers of trucks owned and operated by individuals not in its employ, engaged in the business of picking up shipments from various shippers in New Orleans and concentrating them at its depot in New Orleans, forwarding them to destinations by independent truck owners or operators, receiving by way of compensation one third of the freight charges. The company on complaint of Motor Freight Lines, Inc., was held to be a common carrier acting without the authority of the commission and was ordered to cease and desist from further operations and to forfeit a fine of $100.

NEW JERSEY COMMISSION: *Re Jersey Central Power & Light Co.* Petition of an electric company for permission to condemn lands of Martha Mooney Williams, in Berkeley township, was dismissed for lack of jurisdiction, where there was no evidence that the owners had disagreed as to price with the power company.

OHIO COMMISSION: *Re Scioto Valley Railway & Power Co.* (*No. 6377.*) Application for consent and authority to abandon passenger and freight service over rails between Columbus and Lancaster and Columbus and Chillicothe was granted, in view of the steadily diminishing revenues. The commission was of the opinion that the demand for transportation service in this territory can be ade-

quately taken care of by existing motor bus service, part of which is rendered by the applicant.

OKLAHOMA SUPREME COURT: *C. C. Julian Oil & Royalties Co. v. Corporation Commission.* The Oklahoma oil conservation statute placing the duty of oil conservation under the care of the corporation commission was declared to be constitutional as a valid exercise of police power. Two justices dissented. (*See Utilities and the Public, page 635.*)

PENNSYLVANIA COMMISSION: *Bisbee Linseed Co. v. Philadelphia Electric Co.* (*Complaint Docket 8261.*) The electric company was held to be justified in adjusting rates to develop off-peak use of current and this complaint by an industrial consumer alleging discrimination was dismissed. (*See Utilities and the Public, page 635.*)

PENNSYLVANIA COMMISSION: *Centre County Lime Co. et al v. Pennsylvania Railroad Co. et al.* (*Complaint Docket Nos. 7790, 7795, 7929, 7930, 8099, and 8100.*) A higher court having decided that the reasonableness of past rates cannot be put in issue in the same proceeding as one raising the question of rates for the future as a basis of legislative action, the commission refused to receive proof of damages to be used as the basis of a reparation award in the same proceeding in which an adjudication of the unreasonableness of past rates was sought. For the same reason the commission ruled that a statute requiring the complaint for reparation to be filed within two years of the accrual of the cause of action cannot be stayed by the filing of a complaint looking merely towards the establishment of the reasonableness of the rate.

PENNSYLVANIA COMMISSION: *1015 Chestnut Street Corp. v. Bell Telephone Co.* (*Complaint Docket 8268.*) The resale of telephone service by the owner of an office building to tenants, thus introducing "the same kind of trouble now experienced in hotels," was prohibited. Out of consideration to existing leases and resulting expenditures, the utility was permitted to serve such patrons already under contract until October 1, 1933, unless voluntarily terminated by the patrons before that date. (*See Utilities and the Public, page 635.*)

SOUTH DAKOTA COMMISSION: *Re Bickford.* (*3924–B.*) Application for a certificate to operate as a Class B motor carrier was denied when apparently the only evidence of necessity for the service was the testimony of his landlord to the effect that the applicant had four children, was crippled, and would have to go on the county unless the certificate was granted. (*See Utilities and the Public, page 635.*)

SOUTH DAKOTA COMMISSION: *Re Hayden. 3997-B.*) The commission refused to deny the application of a motor carrier to operate in interstate commerce because of minor violations of regulatory laws, in view of court decisions holding the state commission to be without authority to refuse such interstate certificates except in extreme cases of flagrant, wilful, and continued disregard for and refusal to conform with state law.

UNITED STATES DISTRICT COURT FOR INDIANA: *Southern Indiana Telephone & Telegraph Co. v. Indiana Public Service Commission.* A suit to restrain by preliminary injunction an order of the Indiana commission issued last August holding in abeyance a petition of the utility for increased rates because of the severe economic depression, aggravated by the recent drought, was denied in view of evidence that the commission had taken further action.

WISCONSIN COMMISSION: *Re Beloit Traction Co.* A company operating a street railway system was held to be a "railway company" and not a "public utility" within the meaning of a statute requiring the commission's consent only for the sale by a public utility operating a street railway or traction properties, and accordingly an application for approval of a certain sale of a traction company's property was dismissed for lack of jurisdiction.

WISCONSIN COMMISSION: *Re Chicago, Harvard & Geneva Lake Railway Co.* (*R-3838.*) Petition by a railway company for authority to discontinue service; dismissed for lack of jurisdiction.

WISCONSIN COMMISSION: *Re Ladysmith Municipal Water Works.* (*U–3985.*) In granting authority to the municipal works for increased rates, the commission held that a municipal plant was not entitled to charge rates that would produce revenues to cover not only operating costs, but improvements as well. It was said that plant additions could only be financed from expenditures of money received from the sale of bonds, appropriations from the general fund of the city, customer contributions, assets offsetting the depreciation reserve or from surplus earnings available for a return on the city's investment.

WISCONSIN COMMISSION: *Re Marshfield Water, Light & Power Co.* (*U–4011.*) A proposal by an electrical utility to revise its rates so as to extend service to rural consumers not exceeding $400 per customer at its own expense, with the imposition of a minimum readiness-to-serve charge was approved and declared to be in line with the present day trend of rural electrification.

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

The Utilities and the Public

The Growing Power of the State Commissions

ANOTHER year moves slowly to a close and once more the National Association of Railroad and Utilities Commissioners assembles in convention at Charleston, South Carolina, to deliberate over the development and future of the policy of regulating public utilities by the states through commissions.

There is much to occupy the attention of the commissioners. There are detailed problems of regulation to discuss such as the control of irregular motor carriers, cut-rate taxicabs, holding companies, monopoly and competition, and other regulatory puzzles.

There is the problem of combating encroachment on the field of state regulation by Federal laws, Federal commissions, and, as some say, Federal courts. There is the general opposition of those who continue to oppose regulation by state commissions and declare that it has failed.

One thing, however, that should not be, and probably will not be, overlooked by the commissioners is the growing power and jurisdiction of their respective boards. If actions speak louder than words, the acts of our state legislatures during the past decade adding more and more duties to the field of commission regulation should be a crushing answer to all wordy arguments about the breakdown of commission regulation.

Scarcely a session of any state legislature passes without some member declaring that commission regulation has broken down and demanding that some new and different system be tried or that we return to the dog-eat-dog days of open competition. But despite such attacks, the real fact remains that the sphere of commission regulation continues to widen and additional duties are being imposed on these tribunals.

Does that betray a real lack of public confidence? Does that indicate any breakdown in the system of commission regulation? Chairman Lee Dennis, of the Montana commission, has brought to our attention the fact that in 1907 the commission in his state was created with limited jurisdiction over "transportation companies," which in that day meant only railway companies. In twenty-three years of its existence, the legislature has year after year built up its jurisdiction until it now has full regulatory powers as to the rates, services, safety, and intercorporate relations of eighteen different types of utility service, whether publicly or privately owned. In addition to this it has numerous collateral duties such as the conservation of oil, state water power, and the supervision of navigation.

From other states comes similar evidence of increasing confidence in the principles of commission regulation. As this goes to press there comes news of a decision in the supreme court of Oklahoma, declaring valid and constitutional a statute placing the all important duty in that state of controlling and conserving oil resources and petroleum products in the hands of the commission. Even investigations commenced in a spirit of hostility towards the commissions seem unfailingly to have resulted in recommendations for augmenting their duties and increasing their powers.

The recent comprehensive investigation in New York state is an excellent example of this conversion of anticommission Sauls to regulatory Pauls. An inquiry fomented by those who openly declared that commission regulation had failed resulted in a majority endorsement of the good work and good faith of the public service commission and

recommendations for increasing its powers and appropriations.

Enemies of commission regulation may interpret these acts on the part of state legislatures as attempts to "give them a final chance to make good." The logical conclusion, however, is that they have demonstrated their fitness to handle increased assignments.

Poverty of a Permit Applicant Is Not Evidence of Necessity

"The people want this man to truck. These fellows get all they want anyway. This man has four children and if he cannot make money to pay rent we will have to put him on the county. He is a cripple but he can run a truck. Are you going to turn down a man that needs support?"

THIS is the testimony of a landlord in support of an application by one of his tenants, Frank Bickford, for a certificate from the South Dakota commission to operate as a Class B motor carrier of property in the vicinity of Alexandria.

Does it constitute evidence of necessity for the proposed service? Unquestionably it is excellent evidence of necessity as far as Bickford's personal fortune is concerned, but its value as showing the public need for a new carrier is not so clear.

Numerous cases such as these come before the state commissions. They make decisions according to law a difficult and unpleasant task. There is no doubt but that such an applicant deserves consideration if it can possibly be given without doing violence to established principles of regulation. But, unfortunately for Bickford's application, the evidence of protesting carriers before the South Dakota board showed that existing service was adequate to meet the needs of the proposed territory. The application was denied. "Convenience and necessity," as used in regulatory laws, applies only to the public and not to the personal needs of applicants.

Preferential Rates for Off-Peak Electric Service Approved

MANKIND has ever been a methodical animal. His strong preference for uniformity and regularity was noticed even by the ancient Greek thinkers. The Machine Age, bringing with it such powerful influences as mass production and standardization, has accentuated this characteristic until the average man today is essentially a creature of system. He rises, sleeps, works, and plays at approximately the same hours each day. Any radical departure from a set schedule stamps him as an irregular and probably impairs his usefulness as a smooth cog in the commercial machine to which he is attached.

This effect of standardization has its merits and demerits, its good and bad effects, not only on the individual, but even on some industries. It is due to this regularity of human habits, for instance, that one of the greatest problems of utility economics has come into existence—the peak load. It is to frustrate the terrific pull of the peak load that special reduced rates are now being put into effect by electric, gas, and even street railway utilities.

The gas utilities are combating the peak with special rates for long-hour uses such as house heating and by encouraging appliances that will use a

small amount of gas over a long-hour period, such as the "thermos" type hot water heater, as compared with the old "instantaneous" type of heater that used a large amount of gas for perhaps only a few seconds. Most families eat dinner at about the same hour, which means that most evening meals are prepared at about the same hour. If, in addition to this cooking peak, everyone washed his hands before dinner with water heated by instantaneous heaters most of our streets would have to be torn up for the installation of larger mains to accommodate the peak demand. That is one reason why gas companies must keep a sharp eye on the development of appliance merchandise.

Likewise the street railway industry is experimenting with rate revisions calculated to stimulate off-peak use of capacity equipment that otherwise cruises more or less empty about the streets of our cities between the morning rush hours and 4 P. M. St. Louis, for instance, has a car fare of 5 cents for patrons riding more than twelve times a week which, presumably, reaches the off-peak class of service.

Electric companies have long attempted to level off the jagged mountains and valleys of these peak loads by offering especially attractive rates during slack hours, and now comes an interesting decision by the Pennsylvania commission specifically approving off-peak preferential electric rates.

It seems that a complaint was filed with the commission by the Bisbee Linseed Company, a Philadelphia industry, against a rate classification of the Philadelphia Electric Company which covered service at 13,200 volts. The complainant was a 2,300-volt customer, but contended that it should be included in the rate because while there may be some theoretical differences in cost to the utility between the 13,200-volt service required by the rate and the 2,300-volt service of the complainant, the physical complexities of the utility's "vast transmission and distribution system make it almost impossible to determine the comparative cost of supplying" the respective services. In other words, the industrial company was urging that cost of service should be the only factor in rate making.

The commission dismissed the contention and held that a difference in rate classes of an electric utility need not be justified entirely on a basis of cost of service, and a utility is accordingly justified in adopting a high load factor rate for the purpose of stimulating off-peak use.

The commission concluded:

> "We do not mean to hold that differences in cost of service do not play an important part in certain cases in determining the reasonableness of rate classifications. What we do mean to hold is that complainant's proposition that under every situation a difference in rate classes of an electric utility must find its justification solely in differences in cost of service, is neither persuasive nor conclusive."

This ruling is certainly in conformity with the trend of decisions of progressive courts and commissions regarding preferential rates for off-peak service, not only of electric utilities, but other classes of service above mentioned.

"Subphones" for Office Buildings Prohibited by the Pennsylvania Commission

THE problem of submetering, which has for some time been bothering electric companies in New York city and elsewhere, now has its prototype in the telephone business.

Submetering, so-called, is the practice of a landlord of an office building or apartment house buying current through a master meter at wholesale for retail distribution to his tenants on his own terms through "submeters." Commissions and courts in various states appear to be divided on the legality of the proposition.

Now the propriety of the practice of what might be called "subphoning" which is simply the resale of telephone service to tenants by the owner of an office building through a private branch exchange begins to invite legal inspection. The most recent development appears to be the decision of the Pennsylvania commission rendered October 16th, turning thumbs down on the practice in the Keystone state.

The commission order was made upon complaints filed by 1015 Chestnut Street Corporation and other Philadelphia office building owners that the Bell Telephone Company had refused to continue to them the same privileges that were being extended to other building owners. The privileges were these: Since 1925 the utility had furnished to the complainants service through private branch exchanges. Tenants were listed in the telephone directories. All bills were paid by the landlord corporation, which in turn had included in the rent of each tenant the cost of extension facilities and listings and charged them in addition 5 cents for each outgoing telephone call.

It was admitted that this practice, which had extended to four landlord subscribers in Philadelphia and about five in Pittsburg, was in violation of the rules and regulations on file with the commission since 1917. In fact, the notice to the complainant that the service would be discontinued was only recently given by the utility because "it was fearful that unless the restrictions in its tariff be strictly enforced all barriers would ultimately be broken down."

In passing on the mushroom development of this type of service, the commission observed that "some of the private branch exchanges now in use are larger and can handle more business than some of the respondent's central office boards." The commission conceded that the "subphone" practice was necessary in large hotels, apartment houses, and clubs, but, even in such cases, declared that the results were far from satisfactory.

Speaking specifically of office buildings, however, the commission said:

> "No such necessity confronts us in dealing with telephone service in office buildings. The services which the management furnish the tenants in office buildings are far different from those furnished by the management of hotels to their guests; and hence it is the testimony in this case, and, indeed, a matter of common knowledge, that tenants in office buildings have no need for frequent personal communication, telephonic or otherwise, with the management of such buildings, and that they can get all the telephone service they require by contracting directly with the telephone company."

Another point passed on by the commission in forbidding the practice of subphones in office buildings was the question of "secretarial service." By this was meant the practice of the office building switchboard operator receiving calls and delivering messages for tenants during their temporary absence from the building. The landlord corporations urged that the elimination of subphones would destroy this valuable service to their tenants.

The commission replied:

> "We do not think that the law makes it the duty of the respondent to amend its rules in order that its patrons may have such a method of providing someone to answer their calls, but it is important to note that the respondent has a special class of service which accomplishes that purpose."

In other words, the Bell Telephone Company of Pennsylvania like many other companies now has a special secretarial service available at reasonable rates for subscribers who cannot arrange to have someone answer their phones during their absence.

In promulgating its order forbidding the practice of subphoning, the commission, out of consideration for existing leases and resulting expenditures, permitted a continuation of the service to landlord subscribers now under contract for a 3-year period terminating October 1, 1933.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1930E NUMBER 3

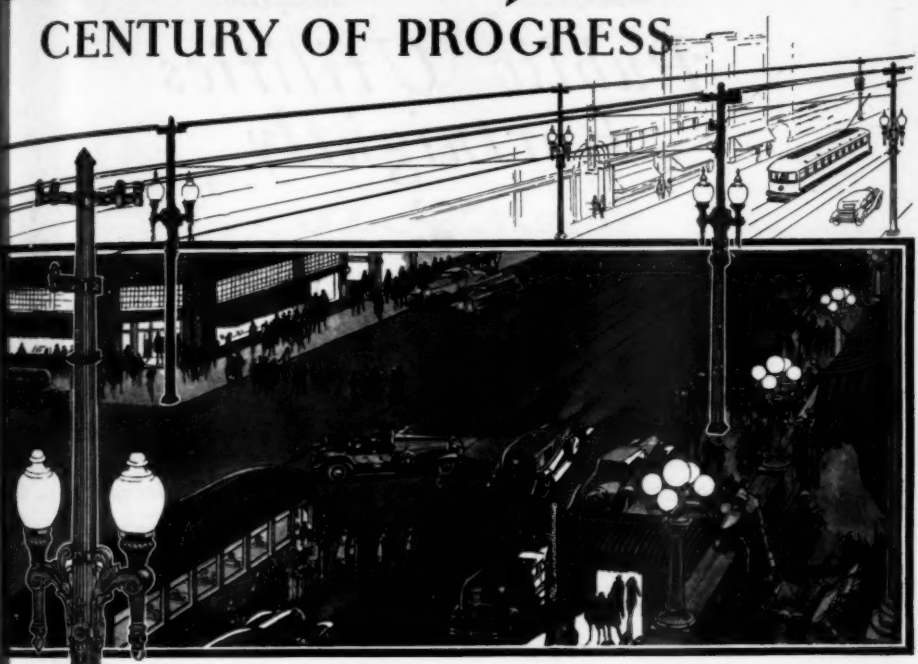
Points of Special Interest

Titles and Index

TITLES

INDEX

Just Wires - but they mark a CENTURY OF PROGRESS



SUPPOSE every wire in the country were to be swept away this moment. In one stroke, we would all be plunged back nearly a century to the era of smoky kerosene or gas lamps, our factories silent, our skyscrapers almost worthless, our electric railway transportation stopped, our radio, electric refrigerator, washing machine and other appliances useless. No telephone or telegraphic services available. Business at a standstill.

Only a catastrophe such as this could bring home how much we rely on those small wires which are so common as to pass unnoticed. Through them flows the substance which turns the wheels of industry, lightens home labors, creates our means of communication, transports us and makes our streets and homes safe and beautiful with light.

Economy and efficiency require the use of pole supports for the wires. It is to these poles that Union Metal has, for years, turned its attention in an effort to develop a support so strong that street lighting equipment, trolley span wires, distribution lines and other services might be combined on one pole and yet so harmonious in design as to lend beauty and dignity to the finest avenues.

How well this result has been achieved can be judged from this fact. Utilities throughout the country—always on the alert for equipment correct in engineering principle and which meets with public approval — are keeping Union Metal plants operating twenty-four hours a day to take care of the demand.

We shall be glad to supply full information on Union Metal Fluted Steel Distribution Poles to anyone interested in improved street appearance.

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NOVEMBER

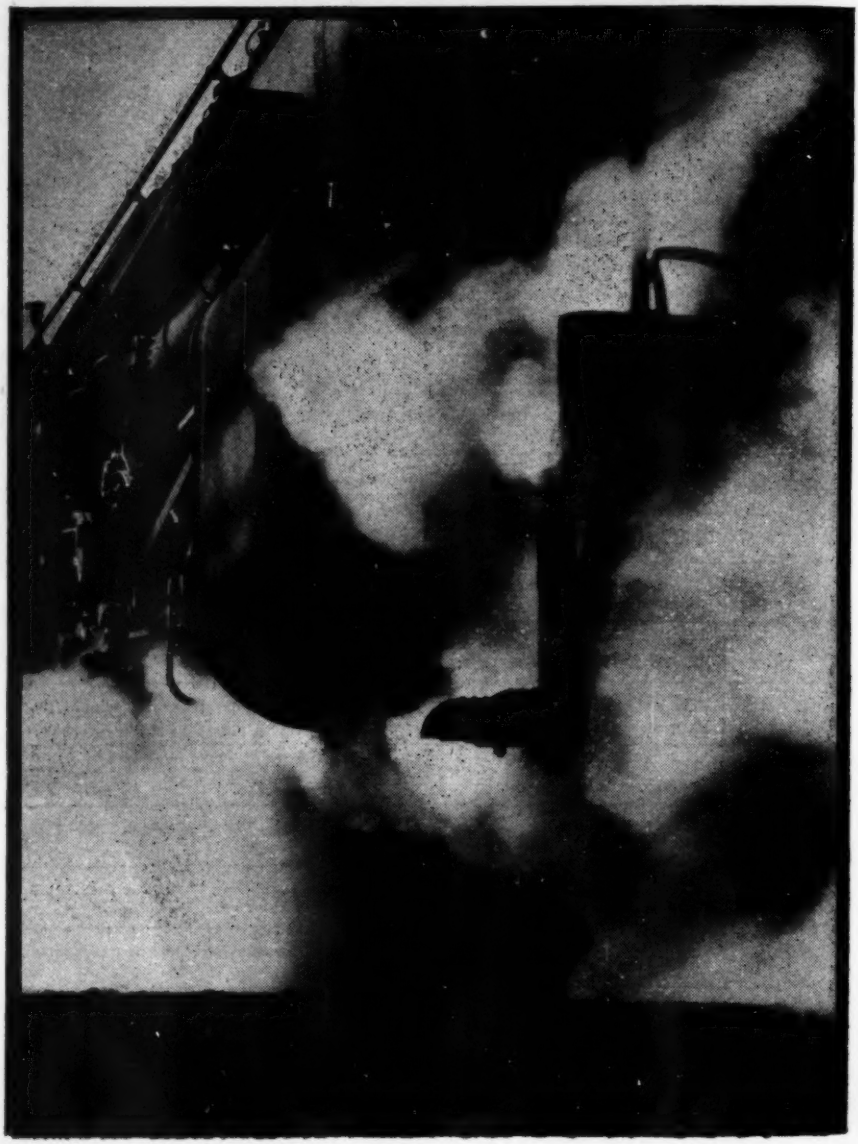
Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

27	T^{h}	CORNELIUS VANDERBILT, destined to become a great power in the development of American railroads, was born at New Dorp, N. Y., 1843. ¶ *Thanksgiving Day.*
28	F	The first American post office, marking a new step in the development of our national communication system, was opened in New York city, 1783.
29	S^{a}	The completion of the newly completed transportation enterprises—the Erie and Champlain canals—was celebrated with impressive ceremony, 1825.
30	S	CYRUS W. FIELD, projector of the Atlantic cable which opened a new era in the history of communication, was born in Stockbridge, Mass., 1819.

DECEMBER

1	M	The Public Utilities Commission of Maine was organized, 1914. Telephone conversation was held between New York, Stockholm, Mexico City, Mukden, and Berlin, 1927.
2	T^{u}	Ground was formally broken at Omaha, Nebraska, for the construction of the Union Pacific railroad tracks, 1863.
3	W	The main street of Richmond, Virginia, was lighted by an experimental, colossal gas lamp mounted on the top of a 40-foot tower, 1803.
4	T^{h}	LOUIS B. MARKS, an American inventor, developed the enclosed arc lamp, thus increasing the life of the carbons twelve fold, 1893.
5	F	The primitive electric telegraph instrument invented by THOMAS VON SOMMERING was delivered to the French Academy of Sciences, 1809.
6	S^{a}	By means of a telephone wire between Washington and New York, the first Presidential message to Congress was broadcast by radio, 1923.
7	S	Relay stage coach travel was vastly bettered with the opening of the first section of the National Road between Cumberland, Md. and Wheeling, W. Va., 1825.
8	M	Commercial telephone service was established from shore to a ship at sea when New York talked to the *"Leviathan,"* over 200 miles away, 1929.
9	T^{u}	The Railroad Commission of Louisiana was organized, 1899. The first locomotive built in the United States was completed at the West Point foundry, 1830.
10	W	Monthly postal service was established by stage coach between the two most important towns in the New World, Boston and New York, 1672.

"Where there is no vision the people perish."
—PROVERBS: XXIX. 18.



From a photograph by Wm. M. Rittase

Despatch

"Machinery is the subconscious mind of the world."
—Gerald Stanley Lee